

EXHIBIT 11

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Civil Action No. 7:17-cv-05915 NSR/LMS

4 -----x
5 FRANKLIN BUONO,

6 Plaintiff,

7 v.

8 POSEIDON AIR SYSTEMS, VICTORY AUTO
9 STORES, INC., et al.,

10 Defendants.

11 -----x
12 May 2, 2018

13 10:02 a.m.

14 VIDEO-RECORDED DEPOSITION of
15 OPRANDY'S FIRE & SAFETY EQUIPMENT, by
16 BRIAN SCOTT, taken by the Parties Present,
17 pursuant to Subpoena, held at the offices
18 of Finkelstein & Partners, LLP, 1279 Route
19 300, Newburgh, New York, before Abner D.
20 Berzon, a Registered Professional
21 Reporter, Certified Realtime Reporter and
22 Notary Public of the State of New York.

23
24
25

Page 2

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TYCO FIRE PRODUCTS, sued as
16 ANSUL, INC., and TYCO FIRE
SUPPRESSION PRODUCTS, TYCO
17 FIRE SUPPRESSION SYSTEMS
18 BY: SANDRA R. STIGALL, ESQ.
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19
20
21 A L S O P R E S E N T :

22
23 CHRIS HANLON, Videographer
PATTY SCOTT

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND
AGREED, by and among counsel for the
respective parties hereto, that the
filing, sealing and certification of the
within deposition shall be and the same
are hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
form of the question, shall be reserved to
the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
signed before any Notary Public with the
same force and effect as if signed and
sworn to before the Court.

* * *

Page 4

1 THE VIDEOGRAPHER: Good morning.

2 We are going record at 10:02 on May
3 2nd, 2018. Please note that the
4 microphones are sensitive and may pick
5 up whispering, private conversations,
6 and cellular interference.

7 Please turn off all cellphones
8 or place them away from the
9 microphones as they can interfere with
10 the deposition audio.

11 Audio and video recording will
12 continue to take place unless all
13 parties agree to go off the record.

14 This is Media Unit No. 1 of the
15 video-recorded deposition of Brian
16 Scott, taken by counsel for defendant,
17 in the matter of Franklin Buono vs.
18 Tyco Fire Products, LP, filed in the
19 U.S. District Court, Southern District
20 of New York, Case No. 7:17-cv-05915.

21 This deposition is being held at
22 Finkelstein & Partners, located at
23 1279 Route 300, Newburgh, New York.

24 My name is Christopher Hanlon.
25 I'm from the firm of Veritext. I'm

1 the videographer today. Our court
2 reporter is Abner Berzon, also from
3 Veritext. I'm not related to any
4 party in this action, nor am I
5 financially interested in the outcome.

6 At this time, I would ask
7 counsel to please state your
8 appearances for the record.

9 MR. FROMSON: For the plaintiff,
10 Franklin Buono. My name is Kenneth
11 Fromson of the law firm of
12 Finkelstein & Partners.

13 MS. MOLINEAUX: Shelley
14 Molineaux, on behalf of Worthington.

15 MS. STIGALL: Sandy Stigall, on
16 behalf of Tyco Fire Products.

17 Thank you.

18 Are you counsel?

19 MS. SCOTT: No.

20 MS. STIGALL: We also -- in
21 addition -- well, do we want to go
22 ahead and introduce Patty?

23 MR. FROMSON: Sure.

24 MS. STIGALL: Patty Scott is
25 also in attendance here today, in

1 addition to the deponent, Brian Scott.

2 THE VIDEOGRAPHER: Thank you.

3 At this time, our court reporter can
4 swear in our witness and we can
5 proceed.

6

7 B R I A N S C O T T , having first
8 been duly sworn by Abner D. Berzon, a
9 Notary Public of the State of New
10 York, was examined and testified as
11 follows:

12 EXAMINATION BY MS. STIGALL:

13 Q. Mr. Scott, could you spell your
14 first, middle, and last name?

15 A. Brian, B-r-i-a-n, middle initial
16 E, last name Scott, is S-c-o-t-t.

17 Q. What is your present home
18 address?

19 A. 5 Lake Ridge, two words, Drive,
20 Middletown, New York, 10940.

21 Q. And are you one of the owners of
22 Oprandy's?

23 A. I am the sole owner present.

24 Q. What is the present location of
25 Oprandy's?

1 A. 49 Brookline, B-r-o-o-k-l-i-n-e,
2 Avenue, Middletown, New York 10940.

3 Q. And we're here today concerning
4 an incident that occurred at Oprandy's on
5 February the 12th, 2016. Did that
6 incident occur at that Brookline address?

7 A. Yes.

8 Q. Mr. Scott, do you understand
9 that you're here today pursuant to a
10 subpoena issued to have you testify at a
11 deposition in this civil action?

12 A. Yes.

13 Q. And I'm going to show you what
14 we will mark as the next consecutive
15 deposition exhibit here in a minute, and
16 just let me ask you if that's the subpoena
17 that you received that prompted your
18 attendance here today?

19 A. Yes, it is.

20 MS. STIGALL: Okay. If we could
21 go ahead and mark that Defendant's
22 Exhibit 10. I think we stopped at 9
23 yesterday. I don't know if we have it
24 in your notes, Shelley, but that's
25 what I have.

1 MS. MOLINEAUX: Yeah, I think
2 you're right here.

3 (Defendant's Exhibit 10,
4 subpoena, marked for identification,
5 this date.)

6 Q. Let me ask you: Is it your
7 understanding, or do you understand, that
8 you would have a right to have legal
9 counsel for you --

10 A. Yes.

11 Q. -- here today?

12 And you've decided not to do
13 that?

14 A. Correct.

15 Q. Alright. What I think I'd like
16 to do first -- well, let's go over some
17 preliminary matters. Have you ever had
18 your deposition taken before?

19 A. No.

20 Q. Do you understand that the court
21 reporter is going to take down what you're
22 saying in written form and the
23 videographer is taking a video of you as
24 you testify?

25 A. Yes.

1 Q. Do you understand this is much
2 like testifying in court in that you're
3 under penalty of perjury --

4 A. Yes.

5 Q. -- like you would be in court --

6 A. Yes, I understand.

7 Q. -- and sworn to tell the truth?

8 A. Yup.

9 Q. Can I ask you -- sometimes I get
10 a little turned around in my questions --
11 if I ask you a question and you don't
12 understand the answer, would you please
13 tell me and I'll try and rephrase it?

14 A. Yes. Okay.

15 Q. As far as getting a good record
16 here today, one of the things that's
17 important is that I completely finish my
18 sentence before you answer. And I know,
19 in normal conversation, a lot of times we
20 can anticipate what the question is, and I
21 have a bad habit --

22 A. I'm good at that myself, yes.

23 Q. -- I want to jump right in. And
24 in order that the court reporter can get a
25 good record here today, if we can both try

Page 10

1 our best to let the other person finish
2 speaking before we respond --

3 A. Okay.

4 Q. -- or before I ask another
5 question.

6 If at any time during this
7 deposition you feel that you need a
8 break -- for any reason whatsoever --
9 please just tell us and we'd be more than
10 happy to allow you to take a break.

11 A. Okay.

12 Q. The only thing -- the only time
13 we really don't want a break is, say, I've
14 asked a question and you haven't answered
15 it yet. We just need to answer the
16 pending question and then we take the
17 break.

18 A. Okay.

19 Q. Are you under any type of
20 medication, drug, alcohol, anything
21 whatsoever today, prescription medication,
22 anything, that would hamper your ability
23 to answer completely and truthfully?

24 A. No.

25 Q. I think what I want to do first,

Page 11

1 before we get into the deposition, is to
2 go over -- and I understand this is an
3 extensive list of exhibits, of items that
4 you were asked to produce at the
5 deposition here today --

6 A. Okay.

7 Q. -- and so we can talk about--
8 I'm about ready to sneeze -- what you
9 brought and --

10 MS. SCOTT: Uh-huh.

11 A. Uh-huh.

12 Q. -- if there's anything that you
13 maybe have that, for whatever reason, you
14 didn't bring today.

15 So --

16 A. Yeah, let me have that. That's
17 the same copy I've --

18 Q. I was going to say --

19 A. No, I got mine.

20 Q. Okay.

21 MR. FROMSON: Thank you.

22 Q. Number 1 is all photographs of
23 the scene where Mr. Buono's accident
24 occurred on February 12th, not limited to
25 photos of the area where the accident

Page 12

1 occurred, the equipment and the tools.

2 Did you bring any photographs
3 with you here today?

4 A. No.

5 Q. Do you have any photographs
6 other than the photographs that were taken
7 by OSHA when they investigated the
8 incident?

9 A. No, I have no photos.

10 Q. You didn't take any photos on
11 your phone or --

12 A. I did, but I don't have them.

13 Q. Okay.

14 A. I was -- I was told to basically
15 look at 'em and delete 'em.

16 Q. When did you delete them?

17 A. Probably about, pshew, maybe a
18 month, a month and a half after.

19 Q. And who told you to delete them?

20 A. One of my -- one of my vendors
21 who I deal with that in Jersey happened to
22 be a retired police chief out of Jersey
23 and we got talking with this -- you know,
24 it's all in the network, all the guys
25 talk, one of the vendors --

1 Q. I understand.

2 A. -- who are very supportive, and
3 he says, "If you have any pictures on
4 you," he says, "You better just get rid of
5 them," he says, "just delete them," and
6 plus, I don't want to look at them. It
7 was just a -- two years is enough now.
8 It's just...

9 Q. So is it your testimony here
10 today that you have no photographs of the
11 scene where the accident occurred or
12 equipment or tools in your possession,
13 electronically or whatever --

14 A. No.

15 Q. -- today?

16 A. No.

17 Q. The second item is all documents
18 used by Oprandy's to train employees
19 concerning the filling of tanks with
20 compressed air, the filling of tanks with
21 agent or hydrotesting tanks prior to the
22 date of the incident. I do see a tab
23 thing here that says "Training" on it, but
24 you know what? Let me do this. Let me
25 hand you the documents --

Page 14

1 A. Okay.

2 Q. -- that I just received, and if
3 you could pull out for me what would have
4 to do with the -- what would be responsive
5 to that inquiry regarding training
6 documents.

7 A. Well, basically the -- the
8 training with Chris Foust was basically an
9 in-house procedure that I trained him.
10 There is really a -- there is a procedure
11 from Poseidon, but I had my own procedure,
12 which I trained him on. I -- that's the
13 way I was taught and that's the way I just
14 rolled it over to him. As far as
15 documentation, I had some here. I don't
16 know if I'll find it. The employee
17 handbook. Yeah, I don't have it here.
18 But, anyway...

19 Basically, it was -- it was just
20 air only. I mean, this -- yeah.

21 Q. Okay. But let me -- okay. Do
22 you have any documents to produce today?
23 Were there any documents that showed
24 training Christopher Foust or -- I'm
25 including in that Mr. Buono -- received

Page 15

1 prior to the incident concerning the fire
2 suppression equipment and -- or --
3 concerning filling of tanks with
4 compressed air, tanks with air. I thought
5 I saw something earlier. If you want me
6 to --

7 A. I just --

8 MS. SCOTT: It is there. I gave
9 it to you.

10 Q. You want me to go ahead and look
11 through that and see if I see anything
12 that's responsive?

13 A. Let me see if I can find it.
14 You know where that it is, Patty?

15 Q. I know there's a lot here. So,
16 I mean, let me just go through this a bit
17 at a time. These, I think, where letters.
18 So I don't think it's -- it may be in one
19 of the other files.

20 Can you hand me the other
21 documents and I'll --

22 A. Okay.

23 Q. -- look through it quickly and
24 see if I can find it in there.

25 I am seeing three documents so

Page 16

1 far -- maybe this would also include -- be
2 included. There's an employer copy, "Keep
3 file in employee's personnel file." It's
4 an acknowledgment that Chris received
5 Oprandy's Fire & Safety Employee Handbook.

6 A. Correct.

7 Q. And it looks like, from the
8 document he signed, that he received the
9 employee handbook on 8/17/2015 --

10 A. That's correct.

11 Q. -- is that correct?

12 I'm going to set that aside --

13 A. Okay.

14 Q. -- because we'll maybe just put
15 these together.

16 Then -- where did I just put the
17 other one? -- there is a document, it
18 looks like a letter, it's "Re: Revised
19 Shop Procedures, to certify that
20 Christopher Foust has been refamiliarized
21 with shop procedures and the layout of the
22 new facility, he's comfortable with the
23 handing of extinguishers." That looks to
24 be dated on November 10th, 2015.

25 A. Correct. That's just when we

Page 17

1 moved into our -- we bought -- we
2 purchased -- we just moved into Brookline
3 Avenue in August. We moved in 1st of
4 November and that was a revised copy of
5 new procedures.

6 Q. And then there's a document
7 dated July 23rd, 2013, Re: Air Compressor
8 Cascade System Training to certify that,
9 on July 23rd, 2013, Christopher Foust was
10 properly trained on the correct filling
11 procedure for SCBA cylinders?

12 A. Correct. That was at my old
13 location in Florida, as you can see by the
14 address.

15 Q. And then after that, I actually
16 have the Oprandy's Fire & Safety Equipment
17 Hazard & --

18 A. Handbook --

19 Q. -- Communications Handbook.

20 A. -- Hazard Communications,
21 correct.

22 Q. Does the document that's dated
23 July 23, 2013 and the addendum, I guess,
24 do those relate to training concerning the
25 cascade system?

Page 18

1 A. Yes.

2 MS. STIGALL: What I think I'm
3 going to go ahead and do is put these
4 documents -- that's, one, two -- three
5 separate pages -- and then we add the
6 Oprandy's Fire & Safety Equipment
7 Program -- and we're going to put
8 those together as the next consecutive
9 exhibit, which would be Deposition
10 Exhibit --

11 THE WITNESS: 11.

12 MS. STIGALL: -- 11.

13 Can we possibly get a stapler in
14 here, because once I start putting
15 these together get, I am going to get
16 them messed up, I'm afraid. We'll go
17 off the record for a minute.

18 THE VIDEOGRAPHER: Sure. The
19 time is 10:18 and we're going off the
20 record.

21 (Defendant's Exhibit 11, various
22 documents related to safety
23 procedures, marked for identification,
24 this date.)

25 (Pause.)

Page 19

1 THE VIDEOGRAPHER: The time is
2 10:20. We're back on the record.

3 BY MS. STIGALL:

4 Q. Regarding the items that you
5 were to bring with you today, training
6 records, the number 2, documents used to
7 train Oprandy's, are there any other
8 documents that would be responsive, other
9 than these pages that I just marked as
10 Defendant's Exhibit 11?

11 A. No.

12 Q. And let me just give you a for
13 example. And I think you said you trained
14 Chris on the Poseidon system?

15 A. Correct.

16 Q. Was -- was there any piece of
17 paper, any document in that training, that
18 he reviewed or that you had him review as
19 a part of his training on the Poseidon
20 SYSTEM?

21 A. In regards to the operation of
22 it?

23 Q. Yes. In regards to the filling
24 of tanks with compressed air, was there
25 any document used or shown to him?

Page 20

1 A. No. Basically, the
2 documentation was, from what I know of,
3 how to use it. I just relayed that -- as
4 the trainer, I just relayed that to him.

5 Q. Did Chris at any time see any
6 owner's guide or product manual or service
7 manual, technical manual, relating to the
8 air filling system?

9 A. Not that I know of.

10 Q. You never showed one?

11 A. I never showed one to him.

12 Q. So, to your knowledge --

13 A. To my knowledge, correct.

14 Q. And we'll go over that training
15 a little bit later.

16 A. Yeah.

17 Q. But right now, it's probably
18 better I just go down my list on items and
19 then we'll take it from there.

20 MR. FROMSON: Can I make a
21 suggestion, just along that line of
22 questioning? Can you ask him whether
23 he possessed one, understanding that
24 he didn't show him one, not to his
25 knowledge. I don't know if he had one

1 to show him.

2 MS. STIGALL: Yeah, I -- can I
3 go into that later?

4 MR. FROMSON: Absolutely.

5 Q. Well, do you have any manuals
6 related to the Poseidon system --

7 A. I have --

8 Q. -- I'm talking about?

9 A. I have the book from Poseidon
10 that I think OSHA took at the time of the
11 accident, because I cannot put my fingers
12 on it. I -- maybe -- umm -- maybe I
13 should say this now, but that compressor
14 was purchased by Poseidon, but built by --
15 I did not purchase it from Poseidon.

16 Q. Yeah. And we'll go into --

17 A. Okay. We'll go into that later.

18 Q. -- all that later.

19 A. I think when this all happened,
20 I have actually a three-ring binder, has
21 manuals, the specs on it, that I think
22 OSHA has it, because we can't find it.

23 Q. Okay. And just to clarify, did
24 the binder and the items in it just relate
25 to the compressor, or did they also relate

Page 22

1 to, for example, the cascade system, is
2 which -- you know, is the tanks that are
3 connected to it?

4 A. Yes.

5 Q. Was it the whole ball of wax?

6 A. The whole ball of wax, because
7 it was -- they're both -- it's two
8 separate items, but they both work
9 together.

10 Q. And we'll go over those later,
11 but is your testimony here today that you
12 currently don't -- you had those items
13 before, you think they maybe went to OSHA,
14 but you no longer have any manuals, specs,
15 documents relating to the workings, the
16 service or what -- anything being the
17 Poseidon system?

18 A. Correct. Yes.

19 Q. Number 3 is documents -- well,
20 number -- number 3 is documents relating
21 to training Christopher Foust or plaintiff
22 prior to the incident on fire suppression
23 equipment. And that would be including
24 documents used to train them regarding the
25 design, installation, testing, and

Page 23

1 servicing of fire suppression equipment.

2 A. I wasn't trained.

3 Q. Well, are you saying plaintiff
4 wasn't trained?

5 A. Correct.

6 Q. Okay. So there would be no
7 documents about Mr. Buono's training,
8 because he wasn't trained on fire
9 suppression --

10 A. Correct.

11 Q. -- systems?

12 What about Christopher --

13 A. Same thing.

14 Q. -- Foust?

15 He -- he didn't go out into the
16 field and test or service fire
17 suppression --

18 A. That's correct.

19 Q. -- equipment?

20 A. He did not.

21 Q. Who did that?

22 A. I did.

23 Q. Did Christopher Foust ever see,
24 or did you ever show him, a, for
25 example -- did you ever show him a ProTex

Page 24

1 manual relating to the design,
2 installation, testing and servicing of a
3 ProTex system?

4 A. No.

5 Q. Do you have those in your
6 possession?

7 A. I have to keep my manuals,
8 because I'm a ProTex distributor, so I
9 always have the service manuals.

10 Q. And you have all the up-to-date
11 manuals?

12 A. Yes, ma'am.

13 Q. To your knowledge, did
14 Christopher Foust ever see those ProTex
15 manuals?

16 A. To my knowledge, no.

17 Q. And when I say "see", I mean
18 actually open 'em up and review them.

19 A. No.

20 Q. To your knowledge, did plaintiff
21 ever review those ProTex manuals?

22 A. No.

23 Q. Let's switch to Pyro-Chem. Did
24 Christopher Foust ever see a technical
25 manual regarding the Pyro-Chem Kitchen

Page 25

1 System?

2 A. No.

3 Q. Did Mr. Buono?

4 A. No.

5 Q. Do you have in your possession
6 manuals for Pyro-Chem Kitchen Fire
7 Suppression --

8 A. Yes, I do.

9 Q. -- Systems?

10 What manuals do you have in your
11 possession regarding Pyro-Chem systems?

12 A. First, I have the service
13 manuals from my training of Pyro-Chem,
14 ProTex, and all the systems that are
15 available to be serviced, and I also have
16 a parts manual for parts, liquid, any
17 components that go the operation of the
18 systems.

19 Q. And you said from your training
20 on Pyro-Chem. Where did you get your
21 training on Pyro-Chem?

22 A. I got a training from an outside
23 agency. It's a husband and wife. They
24 train people in my industry around the
25 country. I am certified every three

Page 26

1 years. I have been since 1992, just to
2 stay up on the standards and OSHA, or
3 NFPA, and, you know, all the requirements.

4 Q. Who -- can you tell me who they
5 are?

6 A. Sure. It's called FPC, Fire
7 Protection Consultants, out of Baltimore,
8 Maryland. The gentleman's name is Edward
9 O'Brien.

10 Q. Are they affiliated or a company
11 that's related to Heiser ProTex?

12 A. I don't know if they're -- I
13 can't say they're actually affiliated, but
14 they have the knowledge and the
15 qualifications to do outside training
16 based on what the manufacturers tell them,
17 whether it's Ansul, Amerex, Kidde. But
18 they have the -- they have the material
19 from the manufacturers of -- or the design
20 companies, and they just train outside.
21 They just train on the outside.

22 Q. Did -- but they're a separate
23 company from Heiser ProTex?

24 A. Yes. Yes.

25 Q. And they're a separate company

Page 27

1 from Ansul or Tyco --

2 A. Yes.

3 Q. -- Fire Products?

4 Have you ever gone through

5 Heiser ProTex training?

6 A. Yes, I have. I'm a Heiser --

7 Heiser is the -- my distributor, ProTex is

8 the manufacturer of the system and I am

9 the -- I'm a Heiser -- a ProTex

10 distributor since 1995?

11 Q. That's an authorized
12 distributor --

13 A. Correct.

14 Q. -- correct?

15 A. Correct.

16 Q. Are you a Pyro-Chem distributor?

17 A. I'm not a distributor. I'm a
18 dealer. There's a difference.

19 Q. What's -- okay. What is that?

20 A. The difference is that -- just
21 to maybe familiarize your-- quickly here,
22 a Pyro-Chem and a ProTex system are
23 identical. It's just that Pyro-Chem
24 designed the system, ProTex is a spinoff
25 of Pyro-Chem, same liquid, same control

1 head, same -- just a different labeling,
2 meets the UL 300 standards for kitchens,
3 but being that I'm a ProTex distributor, I
4 can buy different parts from Pyr-- through
5 Heiser of Pyro-Chem, but I can't buy a
6 whole use. I can buy a tank but not a
7 complete system, but I'm a dealer. If
8 they -- they call it a dealership, instead
9 of a distributor.

10 Q. So am I correct that you are
11 able to, through channels, obtain parts
12 and work on Pyro-Chem systems, but you're
13 not a Pyro-Chem distributor?

14 A. Correct. I'm a dealer. Yes.

15 Q. Right. But you're not an auth--

16 A. Correct.

17 Q. -- you don't have a contract
18 where you're --

19 A. No.

20 Q. -- an authorized distributor?

21 And you haven't been trained,
22 say, in Marinette or specifically by
23 Pyro-Chem?

24 A. No, but I've been trained
25 from --

1 Q. Yes.

2 A. -- Ed O'Brien --

3 Q. Right.

4 A. -- to --

5 Q. At --

6 A. -- service -- it's a service --

7 Q. -- FPC?

8 A. Right.

9 Q. But just -- just so I keep the
10 record straight, you have not been trained
11 by Tyco --

12 A. Correct.

13 Q. -- Fire Products regarding
14 Pyro-Chem?

15 A. Correct.

16 Q. So you have these manuals
17 relating to -- I'm just trying to
18 summarize.

19 A. Sure. Go ahead.

20 Q. So you have these manuals
21 relating to Pyro-Chem systems and ProTex
22 systems, but those documents were not
23 reviewed by either Christopher Foust or
24 Frank Buono?

25 A. Correct. There would be no

1 reason.

2 Q. And they weren't trained on
3 those --

4 A. Correct.

5 Q. -- systems?

6 So you're not producing anything
7 as to number 3 --

8 A. Correct.

9 Q. -- number 4 maybe redundant, to
10 a certain extent, and all documents
11 related to the purchase, servicing,
12 operation or repair of the Poseidon air
13 filling system being used on February
14 12th. I think we already talked about the
15 binder that you had --

16 A. Correct.

17 Q. -- had before?

18 A. Correct.

19 Q. Do you have any documents that
20 are related to the purchase of that
21 system?

22 A. No, I don't. I -- no, I don't.

23 Q. Okay.

24 A. I bought it -- I bought it as a
25 used system.

Page 31

1 Q. And who did you buy it from him?

2 A. I brought it -- I'm a past fire
3 chief of the -- of a fire department in
4 the same town and they --

5 Q. Middletown?

6 A. Or it's in Howells, New York.
7 It's Howells Fire District. They bought
8 it new from Poseidon in 1989 when I was a
9 member. We upgraded it, the air system,
10 in 2000, it was available for sale, I
11 bought it from the Howells fire district.
12 When I bought it, I bought the compressor,
13 I bought the four tanks, the regulator,
14 all the main -- and the service manuals.
15 And it was serviced from them and
16 Poseidon, on a regular basis, it has to be
17 serviced and do the air testing, and
18 everything like that, and was done by
19 Poseidon.

20 Q. When was the last time prior to
21 the February 12th, 2016 incident that that
22 system was serviced?

23 A. Well, the compressor -- without
24 me looking at it, I want to say 2014
25 maybe. It has to be serviced once a year,

Page 32

1 minimum once a year. I want to say
2 either '14 or '15, before we moved. That
3 was just on the compressor. As far as the
4 tanks, there really is no service on
5 those.

6 Q. And was there ever any service,
7 since you bought it, on the -- I think you
8 said you had the compressor, you had the
9 tanks, and you had the regulator.

10 A. Correct.

11 Q. Was there ever any service on
12 the regulator?

13 A. (Nodding)

14 (Discussion held off the
15 record.)

16 A. No.

17 Q. And, you know, I should have
18 said that at the beginning --

19 A. "Yes" or "no".

20 Q. -- and I usually always say it,
21 although we have the video that's catching
22 this up and down, and side by side, we
23 need to get the record?

24 MS. STIGALL: And thank you,
25 court reporter, for the...

1 Q. Do you have in your possession,
2 because that was one of the documents,
3 types of documents asked on number 4,
4 documents in your possession showing the
5 servicing the Poseidon air filling system?

6 A. No. I have no records in my
7 possession.

8 Q. On the day of the incident,
9 was -- when the tank was being filled, was
10 the equipment that was being used that
11 compressor and accompanying tanks and
12 regulator that were purchased from you
13 from the Howells Fire Department?

14 A. Uh-hum.

15 Q. Those items always stayed
16 together?

17 A. Correct.

18 Q. And, I'm sorry, what year did
19 you say you purchased it?

20 A. 2000.

21 Q. I had that written down, but I
22 wasn't sure.

23 What was the purpose of
24 purchasing it? What were you going to use
25 it for?

1 A. Well, A) It's a -- the
2 compressor and the air system is for
3 filling air packs, for SCBAs, the fire
4 department's use, because being in the
5 fire business of the DOT retest facility,
6 and I still can still fill bottles. I
7 send them out now. It's that you have to
8 fill bottles. It's -- it's special
9 breathing air -- special breathing air
10 goes through a filter process and
11 everything else.

12 Q. So, prior to this incident,
13 other than filling these test cylinders
14 with the Poseidon system, what other uses
15 did you put that system to, where were you
16 filling SCBAs?

17 A. Up until this, no.

18 Q. What did you use the Poseidon
19 compressor, bottles, regulator for from
20 the time you purchased it in 2000 to the
21 date of this incident?

22 A. I -- what I used it for?

23 Q. Yeah.

24 A. I used it for filling air
25 pack -- or SCBA bottles.

Page 35

1 Q. Okay. That's what -- okay.

2 A. SCBAs, Self-Contained Breathing
3 Apparatus, air packs, Scott packs.

4 Q. And you did that for the fire
5 department?

6 A. Fire departments, industrial
7 accounts, whoever needed it, when -- at
8 any given time.

9 Q. So am I using the right term to
10 say that you're like an air filling
11 facility or -- what's the correct term?

12 A. Correct, air filling.

13 (Indicating). It's part of the industry.

14 Q. So you were filling SCBA bottles
15 for the fire department?

16 A. For the fire service or
17 industrial accounts.

18 Q. How about for dive operations or
19 anything like that?

20 A. No. I -- it's the same grade of
21 air, but I didn't have the adaptors. I
22 don't -- I never filled any S-- for -- for
23 dive, no.

24 Q. So you were filling SCBA bottles
25 for the fire department and for

1 industrial --

2 A. Industrial accounts.

3 Q. And then am I correct that you
4 were also using it to fill cylinders that
5 you would use to go out and test systems?

6 A. Correct. Correct.

7 Q. Was that -- is that it, or is
8 there any anything else you used the
9 system for?

10 A. No, that's it.

11 Q. From the time you purchased that
12 system in 2000 to the date of the
13 incident, other than -- did you do the
14 work in filling SCBAs and --

15 A. Yes. Yes.

16 Q. Anybody else?

17 A. Chris Foust, who I trained.

18 Q. Anybody else?

19 A. No.

20 Q. And I'm kind of diverging from
21 the documents, but some of these things
22 are leading certain ways, so -- I'm going
23 to get back to the documents --

24 A. Okay.

25 Q. -- realizing that I may follow

1 up on some of this later.

2 A. That number 4 actually explains
3 about that air compressor, if you look at
4 that air compressor, and I explained this
5 right to OSHA that morning, that air
6 compressor wasn't even hooked up
7 electrically, but it's an integrated part.
8 You have to have the compressor to fill
9 the air bottles.

10 Q. The bottles were hooked up?

11 A. The bottles were hooked up.
12 That was it. But no electric to it and
13 that's the reason why in the beginning I
14 was a little hesitant on giving OSHA the
15 manual. I says, there's -- there's
16 nothing -- there's no electric. Here,
17 follow it. There's no --

18 Q. But your -- you -- you seem to
19 remember giving them the manual --

20 A. Yes.

21 Q. -- for the Poseidon?

22 But they didn't take the system
23 itself?

24 A. No.

25 Q. All documents -- number 5: All

1 documents related to the purchase,
2 servicing, operation, or repair of any
3 regulator used at Oprandy's when filling
4 tanks with compressed air or agent in
5 2016.

6 So I'm -- I think 4 we kind of
7 made it cover the regulator, but let's
8 just say this is specifically as to the
9 regulator.

10 A. Correct.

11 Q. I'm assuming, since you don't
12 have any documents that have to do with
13 the purchase of the air filling system and
14 the regulator came with it, you don't have
15 any documents about the --

16 A. No documentation, no.

17 Q. -- no documentations of the
18 purchase?

19 Did you at any time -- and I
20 think I asked this before, but let's just
21 make sure. At any time after you
22 purchased the regulator with the air
23 filling system, did you ever at any time
24 service or calibrate the regulator?

25 A. No.

Page 39

1 Q. So you don't have any service
2 records on the regulator?

3 A. No service records -- no service
4 records on the regulator, correct.

5 Q. And then I'm just going to close
6 the loop, because it says "repair". Would
7 it be correct that you never did any sort
8 of repairs on the regulator since you
9 purchased it in 2000?

10 A. That's correct, no repairs.

11 Q. So as to number 4 -- number 5,
12 you have no responsive documents?

13 A. No. No documents.

14 Q. Number 6, all documents related
15 to the training Christopher Foust or
16 plaintiff received regarding hydrotesting
17 or filling tanks with compressed air and
18 agent prior to February 12th, 2016. Other
19 than what we already marked --

20 A. Uh-hum.

21 Q. -- as a deposition --

22 A. Correct.

23 Q. -- deposition exhibit -- I think
24 it was 9 or 10 -- do you have any other
25 documents regarding training of

Page 40

1 Christopher Foust regarding hydrotesting
2 or filling of tanks with compressed air
3 and agent.

4 A. No, nothing, except for what I
5 gave you for number 2.

6 Q. And --

7 A. As far as the -- the
8 testing -- and it says right in number
9 2 -- that the tank was a DOT tank, made by
10 Worthington, that I am not a DOT retest
11 facility, so he had no training on
12 hydrotesting those cylinders, because I
13 don't have the -- you have to have a
14 license with DOT, and I don't have it, so
15 there would be no training, either way.

16 Q. Did Christopher Foust do
17 hydrotesting of tanks at your facility?

18 A. Yes, but they were not tanks.
19 They were fire extinguisher cylinders and
20 at low pressure --

21 Q. Okay.

22 A. -- which you don't have to be
23 a -- a non -- a non-DOT tank, you do not
24 have to be licensed and I can do 'em.

25 Q. Did Christopher Foust hydrotest

Page 41

1 extinguishers at your facilities?

2 A. Yes. Low pressure.

3 Q. Okay. And what do you mean when
4 you say "low pressure"?

5 A. Anything less than 999 pounds.

6 Q. P.s.i.?

7 A. Service pressure. Yes. Fire
8 extinguishers are a 100 p.s.i., maximum
9 195, 240. Service pressure.

10 Q. Do you, at your facility,
11 hydrotest kitchen fire expression system
12 agent tanks?

13 A. No.

14 Q. Where do you go to have that
15 done?

16 A. I send them out to a company
17 down in southern Jersey.

18 Q. Prior to the incident, did you
19 ever at your facility do hydrotesting of
20 Pyro-Chem tanks?

21 A. No.

22 Q. Prior to the incident, did you
23 ever do hydrotesting of ProTex agent
24 tanks?

25 A. No.

Page 42

1 Q. Didn't test any?

2 A. Didn't test any of them.

3 Q. What about filling ProTex tanks,
4 refilling them with agent and air; did you
5 do that at your facility?

6 A. Yes.

7 Q. And it's I think what they would
8 call recharging?

9 A. Recharging, correct.

10 Recharging, refilling, the same thing.

11 Q. Did Christopher Foust do
12 recharging of ProTex tanks?

13 A. I want to say I don't recall. I
14 mean, to be honest with you, we were only
15 there for four months from the time I
16 moved into my building to the time of the
17 accident. I'm going to probably say no.

18 Q. But even at the other facility,
19 did he do recharging ever, because didn't
20 he -- hadn't he worked there for several
21 years?

22 A. Yeah, he worked there for
23 several years. On occasion, I can't
24 recall how many he did. If we did, we did
25 it together, but most of the time, I did

Page 43

1 most of the recharging, because, like I
2 said, that's my -- that's my forte. I got
3 all the -- you know, I know all the ways
4 to do it, the proper way. But I can't
5 recall.

6 Q. He might have?

7 A. He might have, yeah.

8 Q. You don't know?

9 A. I -- like I said, I don't
10 recall.

11 Q. Did Frank Buono ever recharge
12 tanks --

13 A. No.

14 Q. -- any kind of tanks?

15 A. No.

16 Q. So it would be fair to say -- am
17 I correct -- that you don't have any
18 documents relating to training of either
19 Christopher Foust or plaintiff regarding
20 hydrotesting or recharging tanks, which is
21 refilling tanks with compressed air and
22 agent?

23 A. Yes, correct.

24 Q. No documents?

25 A. No documents.

Page 44

1 Q. 7. All documents relating to
2 the purchase or acquisition of the tank
3 and valve that were being filled at the
4 time of the incident?

5 A. No. Can I -- okay.

6 Q. So you don't have --

7 A. No documents.

8 Q. -- have any document?

9 A. No.

10 Q. And can you tell me why it is --

11 A. Okay.

12 Q. -- that you don't have any
13 documents?

14 A. The tank -- the tank that's in
15 question was made by Worthington for
16 Pyro-Chem. It was made for Pyro-Chem
17 distributors to be an air test tank, no
18 labelling, no markings, no siphon tube in
19 the valve assembly, and the tank was green
20 on the collar and red on the bottom, as
21 the pictures showed of what was left of
22 it.

23 The gentleman -- in 2014, I
24 purchased the business called Catskill
25 Fire Systems from my best friend, Rick.

Page 45

1 He was a Pyro-Chem distributor, he bought
2 the tank from Pyro-Chem for a test tank.
3 It probably 1998 when the tank was made.
4 No markings on it.

5 Anyway, prior to me purchasing
6 this in '14, I used to borrow that tank
7 from Rick; "Hey," Rick I need a tank, I
8 need a test tank. Can I borrow it?"

9 "Yeah, get it back to me, make
10 you sure you fill it with air." And
11 that's the only thing that tank ever saw
12 was either -- was air. That's all it was.
13 There was no -- ever no liquid, no -- it
14 was made and sold by Pyro-Chem as a test
15 tank.

16 Q. You said it doesn't have a
17 siphon tube. And that -- that's the tube
18 that goes down in and then --

19 A. That's pick up --

20 Q. -- delivers --

21 A. That'll pick up the liquid. You
22 don't need one with air.

23 Q. Did it have a valve on the top
24 of it --

25 A. Yes.

1 Q. -- when you purchased it?

2 A. Yes.

3 Q. Okay. And I -- I'm -- we're
4 gonna try real hard to not talk over each
5 other, because -- once I start to get
6 comfortable, I tend to do it, and I think
7 we all do that.

8 What's Rick's last name?

9 A. Dillon, D-i-l-l-o-n.

10 Q. And where was Catskill Fire
11 Systems located?

12 A. Napanoch, New York. Ulster
13 county.

14 Q. When did you purchase the
15 company?

16 A. August 2014. And this tank was
17 part of the purchase of the business with
18 his inventory.

19 Q. If we looked at the tank
20 immediately prior to the incident in
21 February of 2016, was that the same valve
22 and tank that you purchased when you
23 purchased Catskill Fire Systems in August
24 of 2014?

25 A. Yes.

Page 47

1 Q. And there's a gauge on the tank,
2 a pressure gauge?

3 A. Yes.

4 Q. That was on there?

5 A. Yes.

6 Q. And up until the time of the
7 incident, was the complete valve assembly
8 on the tank? And by that, I mean, there's
9 a part that goes on the top that --

10 A. Schraeder. It's the connecting
11 valve with a Schraeder valve.

12 Q. Yes.

13 A. Yes.

14 Q. Was that on there prior to
15 filling it on that date --

16 A. I want --

17 Q. -- to your knowledge?

18 A. I want to say yes, to my
19 knowledge.

20 Q. But wouldn't you need to have
21 that on to be able to fill it?

22 A. No. That's why I'm -- that's
23 why -- what it is, it's a -- it's a brass
24 valve that screws into the head and it's
25 got a Schraeder valve. You don't need it

Page 48

1 to fill the tank, but you need it to do
2 the test on the tank, because the
3 connection -- that will screw on to the
4 control head of the fire suppression
5 system that you're doing the test, or a
6 piece of copper tubing, but you don't need
7 it to fill the tank.

8 Q. If --

9 A. You need it to discharge it out,
10 but not to come in.

11 Q. That piece on top has a little
12 valve on it?

13 A. Yes. Probably about as big
14 as -- probably about as big as this
15 (indicating) and it's got threads on the
16 outside, and it's got a Schraeder valve,
17 as if you were filling like a Schraeder
18 valve for a tire, and that would screw on,
19 but you could have that off or loose, but
20 it -- you don't need it, because you're
21 filling the tank from the side.

22 Q. If when you're filling your --
23 the tank, you're pressing down on a valve
24 to put the agent in, would that be the
25 valve that you --

Page 49

1 A. You really don't have to push it
2 down when you're pushing air in, but --

3 Q. But would that be the only
4 valve --

5 A. Yes.

6 Q. -- that would be there to press
7 on, the one that I'm talking about that
8 screws into the top?

9 A. That's not really a valve.
10 That's just a -- it's just a part of
11 the -- part of the component of the
12 system. You could -- like I said, you
13 could take that -- there's an actual name
14 for it. You could actually take that off
15 and you could still fill the tank.

16 Q. Okay. So it's your testimony,
17 sitting here today, that you're not -- you
18 don't know, one way or another, whether
19 that portion was on the top of the tank at
20 the time it was being filled in February
21 of 2016?

22 A. Yes.

23 Q. So as to number 7, you don't
24 have any documents regarding the purchase
25 or acquisition of the tank and valve?

Page 50

1 A. That's correct.

2 Q. Do you know if -- or had that
3 valve ever been rebuilt by your company
4 since it was purchased in August of 2017?

5 A. Rebuilt? No.

6 Q. And had the cylinder ever been
7 hydrotested, to your knowledge?

8 A. No, it was never hydrotested.

9 Q. Number 8 was all labels,
10 warnings, manuals or other documents in
11 your possession at the time of the
12 incident regarding the design,
13 installation, servicing, repair, testing,
14 filling or refilling of the tank and valve
15 that was being filled by Mr. Foust on
16 February 12th.

17 A. I have no documentation on that,
18 on that particular tank. Like we said
19 before, that was part of the purchase.

20 Q. Well, am I correct that you do
21 have documents that relate to the
22 Pyro-Chem system?

23 A. Yes.

24 Q. You have the Pyro-Chem --

25 A. Service manuals.

1 Q. -- service manuals, the
2 technical manuals?

3 A. Yes.

4 Q. And am I correct that those
5 technical manuals would contain
6 information about recharging a tank?

7 A. Yes.

8 Q. Number 9, all notes or
9 compilations made by you or any Oprandy's
10 employee regarding the incident that
11 occurred. I think I saw in here there was
12 a document that I believe was -- it's my
13 understanding -- was produced by OSH-- to
14 OSHA that was an incident report.

15 A. Is that the one from OSHA? Is
16 that the OSHA incident report?

17 Q. Well, this is incident report
18 for February 12th. It looks like maybe
19 something you all put together for OSHA.

20 A. Yes.

21 Q. Would that be like notes, I
22 guess? That looks like that would be
23 responsive to that category?

24 A. Correct.

25 Everything -- everything that led up to

Page 52

1 that day or what was going on.

2 Q. Other than this document, do you
3 have any other documents that are notes
4 or -- that contain information that you
5 put together that had to do with what
6 happened that day?

7 A. There should be some paperwork
8 in there from Workmen's Comp, with the
9 incident numbers. I don't know if you
10 need that or not. The only thing I don't
11 have -- like I said in my statement, the
12 only thing I don't have is I don't have
13 the original BCI report from the State or
14 I don't have the fire report from the
15 local fire department.

16 Q. DCI report?

17 A. BCI, Bureau of Criminal
18 Investigation. They took a statement that
19 morning along with --

20 Q. From you?

21 A. -- OSHA.

22 From me, along with OSHA. And
23 then there's also the report from the fire
24 department, the basic field incident
25 report.

1 Q. But you don't have those in your
2 possession?

3 A. No. I never got them.

4 Q. You mentioned something else
5 that you thought was in here and I'm going
6 to look through this real quick, let's see
7 if I can locate it.

8 A. I know there's Workman Comp case
9 numbers in there and everything.

10 Q. Is this the one you were talking
11 about?

12 A. This is the -- no, this is the
13 letter in March from the DOT, Department
14 of Transportation. They came in because
15 of the DOT regulated tank. So you might
16 want to use that.

17 Q. Well, it looks like it was from
18 you --

19 A. Yes.

20 Q. -- to the DOT?

21 A. To the DOT. That was basically
22 after they came in. They came in like
23 maybe four days after the accident. That
24 was just a summary of what they were
25 looking for and everything else.

1 Q. So this is information you
2 provided to the Department of
3 Transportation after the incident?

4 A. Correct.

5 Q. Okay. I think I'll put that
6 with this just because it's authored by --

7 A. Us.

8 Q. Yes. But was there something
9 else that you're looking for --

10 A. Unless.

11 Q. -- that had Worker's comp?

12 A. Workman's Comp? No. I mean,
13 there was a Workman's Comp case number --
14 two case numbers, and that should be it.

15 Q. I don't see anything else, but
16 what I think at this point I'll mark these
17 two documents as Defendant's
18 Exhibits 11 --

19 A. 12.

20 Q. -- 12, which is the incident
21 report by -- for February 12th, 2016
22 prepared by -- who prepared this?

23 A. My other half. We did.

24 Q. Okay. And that's Pat?

25 A. Patty, yes.

1 Q. Patty.

2 And then what about the letter
3 to the U.S. Department of Transportation?

4 A. Same thing.

5 Q. Pat prepared that?

6 A. That was compiled by us
7 together, joint effort.

8 Q. Okay. We'll go ahead and mark
9 that?

10 A. We did it fresh, while -- we did
11 it, by the way, while it was still fresh
12 in our minds.

13 Q. You've already seen these; is
14 that right?

15 A. Yes.

16 (Defendant's Exhibit 12,
17 February 12th, 2016 incident report and
18 letter to U.S. DOT, marked for
19 identification, this date.)

20 Q. You know what? I think I'm
21 going to go ahead and mark also for
22 Defendant's Exhibit A. These are
23 basically pretty much what I'm going
24 through, the exhibits, the answers for the
25 Exhibit A. Can you identify that. I

1 think it's just going through and it's an
2 explanation of what was produced.

3 A. Correct. This is the same thing
4 that I have.

5 Q. Okay. And did you and Patty
6 prepare that?

7 A. Yes, we did.

8 Q. Okay.

9 MS. STIGALL: So I'm going to go
10 ahead and mark that as Defendant's
11 Exhibit 13.

12 (Defendant's Exhibit 13, Answers
13 to Exhibit A, marked for
14 identification, this date.)

15 Q. Number 10, it looks like that
16 just relates back to the number 2, which
17 is...

18 A. Training.

19 Q. ... training.

20 Did you have anything at
21 Oprandy's that listed the steps for
22 filling tanks with compressed air at the
23 time of this incident?

24 A. Did I?

25 Q. Yes.

Page 57

1 A. No. Everything was from what I
2 know of.

3 Q. Okay.

4 A. I mean, I -- verbally.

5 Q. On the job?

6 A. Verbally.

7 MS. STIGALL: I also -- I think
8 we talked about this employee handbook
9 earlier as one of the items he had
10 reviewed. I'm going to go ahead and
11 mark that as Defendant's Exhibit 14.

12 (Defendant's Exhibit 14,
13 employee handbook, marked for
14 identification, this date.)

15 Q. Do you -- it looks like this was
16 an employee handbook that was prepared in
17 1998.

18 A. Yes.

19 Q. Is that when your business
20 started?

21 A. No. No. I -- my business
22 was -- I bought the business in 1979. In
23 1998, my older brother came on board and
24 helped me out and he came from that
25 industrial end, came from the Navy and we

Page 58

1 started a small handbook. It was just him
2 and I, but, as you grow, you get
3 employees, we just worked down the road,
4 so every so often we would revise it, and
5 then when we moved into our new building
6 in '15, we revised it for the final time,
7 which was in August, or whenever we -- we
8 moved in, you know, late quarter --

9 Q. August --

10 A. -- of --

11 Q. It says --

12 A. -- '15.

13 Q. -- August of 2015.

14 A. '15, right. That's when we
15 bought the building. We revised it one
16 more time, because I was -- more
17 employees.

18 Q. So this handbook was the one
19 that was applicable at the time of the
20 accident?

21 A. Yes.

22 Q. Number 11 was Christopher
23 Foust's employment file with Oprandy's.
24 What did you bring today that is
25 Christopher Foust's employee file?

1 A. It's enclosed. We brought his,
2 I want to say, his payroll records.

3 Q. Okay. I have --

4 A. You have that.

5 Q. We have a (indicating)

6 A. Correct. Let me see that.

7 No, this is Frank Buono's.

8 Q. Oh, sorry. My mistake.

9 A. What do you have?

10 MS. SCOTT: I have it.

11 MS. STIGALL: Patty, do you have
12 that?

13 MS. SCOTT: Uh-uh.

14 MS. STIGALL: I did see one
15 document.

16 MS. SCOTT: Here's that --
17 here's his employee information and
18 this was the decision from there and
19 just his W-4, which I don't think you
20 want.

21 MS. STIGALL: Yeah.

22 Q. We'll go -- let me hand you --
23 well, let's mark it first, Defendant's
24 Exhibit 15.

25 (Defendant's Exhibit 15,

1 Christopher Foust's employment file,
2 marked for identification, this date.)

3 Q. Can you look at what's been
4 marked as Defendant's Exhibit 15 and tell
5 me if those are the documents you are
6 producing as Christopher Foust's
7 employment file?

8 A. Yes.

9 Q. So there's also here a document,
10 it says -- read about why you're looking
11 in the files and there's a letter of
12 reprimand to Christopher Foust, and then
13 it looks like there's a couple of letters.
14 I'll hand these to you.

15 Are these also from Christopher
16 Foust's employment file?

17 A. Yes.

18 Q. So those should be part of
19 Defendant's Exhibit 15, in terms of
20 documents that were part of his file?

21 A. Yes.

22 Q. Something just came to mind
23 that's a little unrelated, but it was our
24 understanding that Franklin Buono found
25 out about the job opening through his

Page 61

1 uncle, whose last name is Faust.

2 A. But no relation.

3 Q. Okay. That's what we wondered,
4 if that's no relation to Christopher
5 Foust.

6 A. Same -- it's Chris was F-o-u-s-t
7 and his uncle was F-a-u-s-t.

8 Q. Okay.

9 A. Same pronunciation; just one
10 letter difference.

11 Q. Thank you. Thank you. That
12 came up the other day and I forgot to ask
13 about it.

14 Is there anything that was in
15 his file that you didn't bring today? And
16 I know I spoke a bit with Pat about
17 Chris's medical records. I understand
18 there might be some things that are
19 considered confidential?

20 A. I think that's everything.

21 That's everything as far as our end, as
22 far as employment.

23 Q. And then 12 is Mr. Buono's
24 employment file with Oprandy's.

25 A. That's all I have, ma'am. He

Page 62

1 was only employed with me for 18 days.

2 Q. So I have this employee check
3 record. Was there anything else in his
4 employment file?

5 THE WITNESS: Patty, what do
6 you...

7 A. I want to say, whatever you
8 have, this is it. Short time.

9 Q. I guess the question would be
10 whether you filled out a job application.

11 MS. SCOTT: Oh, yeah, I have
12 that stuff. Here's his W-9. Let me
13 just see what else. The Finkelstein
14 letter...

15 (Discussion held off the
16 record.)

17 MS. STIGALL: Let's go ahead and
18 go off the record for just one moment
19 while she gets --

20 MS. SCOTT: That's his
21 information that we filled out.

22 THE VIDEOGRAPHER: The time is
23 11:05. We're going off the record.

24 MS. STIGALL: Thank you.

25 THE VIDEOGRAPHER: This will be

1 the end of Media File No. 1.

2 (Brief recess.)

3 THE VIDEOGRAPHER: We are back
4 on the record. The time is 11:06.
5 This is the beginning of Media File
6 No. 2.

7 MS. STIGALL: So we'll go ahead
8 and mark...

9 Q. These are the documents that
10 were produced as far as Plaintiff's
11 employment file in response to number 12;
12 is that correct?

13 A. Yes.

14 MS. STIGALL: And that will be
15 the next consecutive exhibit, marking
16 exhibit 16.

17 (Defendant's Exhibit 16,
18 Plaintiff's employment file, marked
19 for identification, this date.)

20 Q. Number 13 is a copy of any and
21 all insurance agreements Oprandy's had at
22 the time of the incident that provides
23 Oprandy's or its employees coverage for
24 any liability related to the incident.

25 A. That would be Workman's

Page 64

1 Compensation, which I have. Hartford
2 Insurance was the carrier, and the case
3 number was assigned to each person on the
4 day of the accident.

5 Q. Did you bring that with you here
6 today?

7 A. I want to say no.

8 Q. Did you have any other insurance
9 other than Worker's Compensation covering
10 the business for incidents that may occur
11 on the premises or covering Oprandy's for
12 liability separate and apart from Workers'
13 Comp?

14 A. Yes. I have building insurance,
15 which I have to have, and I have liability
16 insurance.

17 Q. And did you bring either of
18 those --

19 A. No.

20 Q. -- with you today?

21 Did you have a -- you said your
22 Worker's Compensation was with Hartford --

23 A. Hartford Insurance.

24 Q. -- Insurance?

25 A. Yes.

1 Q. Did it have a policy limit?

2 A. Pshew! Not that I know of.

3 Q. And then your building
4 insurance, who is that through?

5 A. Oh, at the time, it was through
6 Mutual -- Mutual -- Mutual Insurance, is
7 that the company? Yes.

8 Q. And, at the time, I guess would
9 be building insurance that you may have
10 had relating to something happening at the
11 building --

12 A. Correct.

13 Q. -- on February 12th, 2016?

14 A. Correct.

15 Q. And it's Mutual Insurance?

16 A. Liberty Mutual. That's what it
17 was. It was Liberty Mutual. They were
18 the policyholders, which I got when I
19 bought the building.

20 Q. And do you know anything about
21 what type of coverage that provides?

22 A. That covered -- I know what it
23 covered. It covered -- it covered the
24 building, it covered content or -- yeah,
25 basically covered the building, whatever

Page 66

1 the requirement was to have when I got --
2 when I purchased the building.

3 Q. And you mentioned liability
4 insurance?

5 A. I have to have liability
6 insurance.

7 Q. And what --

8 A. That is --

9 Q. What do you mean you have to
10 have it?

11 A. To be in business. It's -- it's
12 a million dollars, a million dollar
13 coverage, million dollars per aggregate,
14 and my carrier is Hometown Insurance,
15 Bohemia, New York, and the policy is
16 written by a company called
17 McNeil & Company out of Canajoharie, New
18 York. I can't give you phone numbers or
19 zip codes, but I think I did pretty good.

20 Q. You did very good.

21 Hometown Insurance, would this
22 be the policy that would have applied at
23 the time of the incident in February 12th,
24 2016?

25 A. No.

1 Q. Okay. What would have applied?

2 A. Workman's Compensation only.

3 Q. No, but I'm saying, was that
4 policy -- were all these policies in
5 effect on that date?

6 A. Absolutely, yes.

7 Q. But you didn't bring the copies
8 today; you don't have the copies --

9 A. No. I mean, you can -- I don't
10 have them, no.

11 Q. 14. Any statement or deposition
12 given by you or any Oprandy's employee
13 regarding the incident. Who did you give
14 statements to?

15 A. The morning of the incident, I
16 gave a statement to the New York State
17 Police, BCI division, as far as what
18 happened. I gave it to 'em, it was
19 a quite lengthy statement, because it had
20 to be redone a couple of times because of
21 the language involved, and then I also,
22 right after that, was the Chris Reed (ph.)
23 from the New York State Department of
24 Labor OSHA from Albany came down, I gave
25 him a statement, and both statements

1 coincided with each other.

2 Q. I'm -- I just have to ask you.

3 You said something it had to be redone
4 because of the language of the statement.

5 I wasn't sure --

6 A. Well, if you don't know the
7 industry, and you're an outsider, it can
8 be difficult to understand. If you're not
9 in the fire service and you're Joe Fireman
10 or just a plain -- you're not going to
11 know what a cascade system is. I had to
12 explain the whole operation of a cascade
13 system and compressor and everything else,
14 and, you know -- so there was the layman's
15 operation, but, to me, is -- it got very
16 intricated sic) where you had to actually
17 explain it and, you know, he read back and
18 looked at it and he said, no, we gotta do
19 this, just to make sure it was right, but
20 that's what took so long for him to do it,
21 and the same with the OSHA guy. I mean,
22 unless you know the language or the
23 industry, it's all new...

24 Q. So, to kind of put that in a
25 nutshell, because of the technical

1 nature --

2 A. Correct.

3 Q. -- of the equipment --

4 A. Correct. And plus being I've
5 been doing it so long.

6 Q. I have some other documents
7 here. A lot of them are from the
8 different attorneys involved, requesting
9 information, requesting the inspection,
10 and then both the subpoenas, and then --
11 I'm not sure what this (indicating) is.
12 Is this just a copy of something?

13 A. Let's me see that. It could
14 be a copy of a fax maybe.

15 MS. SCOTT: It's a fax.

16 Q. Was it --

17 A. This was a fax sent on April
18 24th. I don't even know where it went to.

19 MS. SCOTT: Disregard it.

20 A. Yes.

21 Q. Yeah, I don't have any idea
22 what --

23 A. There's no number or nothing.

24 Q. There's no information. What I
25 think I'll do is, once we take a break,

Page 70

1 I'm just going to -- well, right now, I'll
2 mark the rest of this that you've produced
3 as the next consecutive exhibit, and, at
4 some point, when we have a break, we'll
5 kind of go through it and decide if we
6 need to ask questions about it.

7 (Defendant's Exhibit 17, an
8 Oprandy's January 24th, 2018 letter to
9 OSHA, and various other letters,
10 marked for identification, this date.)

11 Q. So this, the next exhibit, is
12 Exhibit 17. The first page has Oprandy's
13 at the top and it's January 24th, 2018 and
14 it's a letter to OSHA from you about when
15 we were talking about trying to get
16 possession of the cylinder --

17 A. Yes.

18 Q. -- and to look at the cylinder.

19 And then there are a number of
20 letters after that, we'll just mark these
21 all as Defendant's Exhibit 17.

22 A. Okay.

23 MS. STIGALL: When we reach a
24 break, I'll get something maybe to put
25 on there because we won't able to

1 staple those together.

2 Shelley just got me one.

3 Q. How long -- and I know you
4 stated it -- let's just start with this:
5 How long had Franklin Buono worked at
6 Oprandy's prior to this incident?

7 A. 18 days.

8 Q. And during the 18 days that he
9 worked at Oprandy's, what were his job
10 duties?

11 A. He was working under Chris,
12 through me also, as a -- to work in the
13 shop, getting to know the familiarization
14 of fire extinguishers, types, sizes,
15 classifications, and the procedures for
16 low-pressure testing and/or recharging.

17 Q. Did anyone other than Chris
18 train Frank on these procedures?

19 A. Chris did most of the training,
20 but I was basically -- I was there, you
21 know, on occasion, overseeing, as the
22 owner.

23 Q. What -- so let's talk about what
24 training you did, or were you just seeing
25 what he was doing, or did -- I just want

1 to get a clear record. Did you ever do
2 training of Frank on the work he was
3 there -- he was doing there at Oprandy's?

4 A. No.

5 Q. Chris did that training?

6 A. Yes.

7 Q. And what did you see Chris do,
8 in terms of training of Franklin Buono?

9 A. Well, basically, everything I
10 just said before, as far as, you know, the
11 procedure to -- you know, checking dates,
12 checking pressures, putting -- making sure
13 you put the right chemical in the right
14 cylinder, you know, make sure the fire
15 extinguisher come in and they have to
16 be -- if -- so they could be tested,
17 inspected, and the labeling of 'em, the
18 packaging of 'em, send them out the door.
19 There's a whole -- the whole ball of -- it
20 goes into one big ball of wax, that the
21 last thing you do, you tag it out and it
22 goes out to the customer, and then there's
23 the paperwork process.

24 Q. Would this be kind of what we
25 think about when we say "on-the-job

1 training"?

2 A. Yes, ma'am.

3 Q. Somebody who's done the job
4 before is showing the next guy how to do
5 it?

6 A. Yes.

7 Q. Do you know, were there any
8 documents -- steps 1, 2, 3, 4, 5, 6, 7 --
9 that Chris used when he was training Frank
10 about what to do?

11 A. I would say Chris had his -- how
12 do I want to put this? His technique on
13 how to do it the right way. I mean...

14 Q. What -- was there, though, any
15 document that was on the wall or that you
16 can produce here today that said, here's
17 what you do: 1, 2, 3, 4, 5, went through
18 the steps?

19 A. No.

20 Q. So the training that Chris gave
21 to Frank was a verbal here's what you do
22 first, here's what you do --

23 A. Correct.

24 Q. -- this is what you do, because
25 of that, that type of thing?

1 A. Yes. Hands-on.

2 Q. In the time that Frank was at
3 Oprandy's, did he do any hydrotesting of
4 fire extinguishers?

5 A. No.

6 Q. Would he inspect fire
7 extinguishers?

8 A. Yes.

9 Q. Would he take the fire
10 extinguishers apart and basically rebuild
11 them?

12 A. Yes. Rework 'em, recharge 'em,
13 yes.

14 Q. So, Frank's job, it sounds like,
15 it is solely related to fire
16 extinguishers?

17 A. Yes.

18 Q. He gets 'em in, he'll inspect
19 'em; if something needs to be rebuilt, he
20 does that; if it -- if they need new agent
21 in 'em, he'll take out the agent and put
22 in new agent and -- what do you --

23 A. Recharge.

24 Q. Recharge.

25 What kind of air do you use on

1 the fire extinguishers?

2 A. Nitrogen.

3 Q. We had some exhibits we used
4 during the deposition Monday that show
5 photographs of various locations, filling
6 stations, whatever you want to call them,
7 at Oprandy's. When Frank would recharge
8 fire extinguishers, was there a particular
9 filling station or a particular device
10 he'd use to refill the fire extinguisher
11 with nitrogen?

12 A. Well, it would be a tank with a
13 regulator, with a hose, with a -- an
14 adaptor that we'd fill into the fire
15 extinguisher and pressurize it.

16 Q. But what I'm -- I'm handing you
17 what was previously marked Defendant's
18 Exhibit 8, Defendant's Exhibit 9, and
19 Defendant's Exhibit 4. They're
20 photographs. Could you look at that,
21 those exhibits, and show me where or what
22 device would be used to refill fire
23 extinguishers with nitrogen?

24 A. Well, this (indicating) has
25 nothing to do with it, because this is the

1 room where the explosion was.

2 Q. So, when you say "this has
3 nothing to do with it" --

4 A. That's the whole --

5 Q. -- you're talking about the
6 photographs in Defendant's Exhibit 4?

7 A. That's a whole -- that's a whole
8 different room.

9 Q. Okay.

10 A. That's not even involved.

11 Q. Okay. And I would assume then
12 that you mean that he did not use the
13 Poseidon system to refill fire
14 extinguishers with nitrogen?

15 A. That's correct.

16 Q. So let's look at the other two
17 exhibits.

18 A. Number 8, this is a low-pressure
19 test machine for filling low-pressure
20 extinguishers. This, and the one happened
21 on the bench, and the two on the floor,
22 happen to be water can extinguishers,
23 which get low-pressure tested to 200
24 pounds. That's test -- that's a -- that's
25 a low-pressure test machine.

1 Q. What's done at that location?

2 A. Testing the -- you're testing,
3 so you're putting -- you're testing the
4 integrity of the shell under pressure with
5 water, hydrotesting.

6 Q. So it's your testimony, as I
7 understand it, that hydrotesting was done
8 at the station that's shown on Defendant's
9 Exhibit 8?

10 A. Yes.

11 Q. Did -- to your knowledge, did
12 Mr. Buono ever fill --

13 A. No.

14 Q. -- extinguishers at that
15 location?

16 A. No. This is a hydrotest
17 procedure. That's why. It's two
18 different -- where I hydrotest and where I
19 fill are two separate parts of the
20 building.

21 Q. And it's your testimony that he
22 never did hydro --

23 A. To my --

24 Q. -- test?

25 A. -- recall, no.

1 Q. Thank you.

2 MR. FROMSON: Just for ease of
3 reference, do you mind if he shows
4 that exhibit to the camera for five
5 seconds, if that?

6 THE WITNESS: This is --

7 MR. FROMSON: You don't have to
8 answer any question. Just hold it
9 steady for a moment. And that is
10 Exhibit 8?

11 MS. STIGALL: Yes.

12 MR. FROMSON: Great.

13 THE VIDEOGRAPHER: Got it.

14 MR. FROMSON: Thank you. And
15 you're about to show a different one?

16 THE WITNESS: Correct.

17 MS. STIGALL: What exhibit is
18 that, sir?

19 THE WITNESS: This is number 9.

20 MR. FROMSON: Just hold it
21 steady for at least five seconds.

22 Thank you.

23 By MS. STIGALL:

24 Q. What goes on at the station
25 that's Exhibit No. 9?

1 A. This is where -- to the -- you
2 can't see it in this picture, but, to the
3 right of that workbench is our -- is what
4 they c-- a hopper system which holds the
5 powder, which it works under air from my
6 shop compressor that you -- works off a
7 vacuum system that you fill the fire
8 extinguishers, and then this bench here
9 (indicating) is the workbench that -- and
10 underneath there are all the drawers with
11 all the parts and valve stems we've got to
12 replace, and this (indicating) is where
13 all the work is done, it's rebuilt, and
14 just to the left of it here (indicating)
15 are my nitrogen tanks, and that's how you
16 recharge it. And you have to recharge it
17 a particular way, and there's adaptors
18 that go into the valve head to hook your
19 nitrogen to, because every fire
20 extinguisher has a different valve
21 adaptor, has a different hookup adaptor.

22 Q. So where do you get the nitrogen
23 bottles?

24 A. I buy -- I have a gas company.
25 They fill 'em. You can't fill nitrogen.

1 You have to --

2 Q. Do you -

3 A. I send them out.

4 Q. -- know what p.s.i. those
5 bottles are filled to?

6 A. Uh... dah, dah, dah ... either
7 1800 or 2015 pounds p.s.i. or higher.
8 Yeah, at least 1800, 2000 or higher,
9 2 -- p.s.i.

10 Q. Did Franklin Buono use this
11 station when he was doing work that you
12 described on fire extinguishers?

13 A. Yes.

14 Q. Which of these stations were
15 used to recharge agent tanks for fire
16 suppression systems?

17 A. Probably I would fill it at the
18 first station, Exhibit 8, because that's
19 got a sink, if I ever had to wash the tank
20 down or anything like that, plus I like to
21 keep the wet away from the dry, because
22 it's a wet liquid, and then I would
23 rebuild them on the work bench and
24 pressurize them here (indicating), because
25 that's where all my parts are and my valve

1 assemblies and my adaptors for recharging
2 it.

3 Q. Let's go through the steps and
4 where you would be at the certain times.
5 Tell me the steps you would go through to
6 recharge a Pyro-Chem tank, like which
7 station and what you would do.

8 A. Well, first -- could I have that
9 one back?

10 Q. Sure.

11 A. First of all, if you look, this
12 is a pneumatic belt vice they call it. In
13 order to take the head off the cylinder
14 you have to put it in took him so long to
15 do it, pneumatic belt vice to hold it,
16 because, otherwise, you won't get the
17 valve head off. You take the valve head
18 off, you'd either -- you dump out the
19 remaining liquid, put in fresh charge of
20 liquid -- usually I like to do that over
21 the sink, because, like I said, it's a wet
22 agent, okay? -- wash anything out that
23 has to be washed, pour my liquid back in
24 the tank, put it back in the vice, because
25 you have to now put the belt around it to

Page 82

1 tighten it, otherwise the tank would
2 leak -- the valve would leak, and then I'd
3 take it or to the other side.

4 I would rebuild the valve
5 either -- either here or at my work bench,
6 but the last thing before it goes to get
7 pressurized, it would come off the belt
8 vice, go over to the workbench, which is
9 here (indicating), and this is where I
10 would fill it with the nitrogen, at this
11 valve.

12 MR. FROMSON: As a courtesy, can
13 you hold up the other exhibit. And
14 what exhibit are you holding up now?

15 THE WITNESS: This is number --
16 this is Exhibit No. 8.

17 MR. FROMSON: Can you just hold
18 it steady --

19 THE WITNESS: Sure.

20 MR. FROMSON: -- for just a few
21 seconds.

22 By MS. STIGALL:

23 Q. So that's where you would do a
24 lot of your initial work?

25 A. That's where you -- you have to

1 devalve it, pour liquid, and re-- revalve
2 it after you've rebuilt the head, and then
3 go over to here and --

4 MR. FROMSON: And that exhibit
5 is what?

6 THE WITNESS: This is 9.

7 MR. FROMSON: Thank you.

8 A. And this will be 9. This is
9 where you would actually pressurize it,
10 because the nitrogen lines are on this
11 side (indicating) of the wall.

12 Q. Okay. And describe to me how
13 you hook it up to pressurize it.

14 A. On the valve head of all fire
15 suppression systems, just like fire
16 extinguishers, there is a port. It's
17 usually it's a half-inch port and there's
18 a -- you should come out with a piece of
19 pipe, a paw, a half-inch piece of pipe,
20 like a -- I call it a black nipple -- and
21 you'd hook on a recharge adaptor, and this
22 here -- it doesn't show it here -- on the
23 end of the nitrogen tank, towards the end,
24 is a quick connect that you'd quick
25 connect, and in between the quick connect

Page 84

1 and the regulator is a ball valve.

2 So you turn the tank on, set
3 your pressure. One tank was -- it's a
4 two-stage regulator. One will tell you
5 pressure going into the tank, one will
6 tell you what your pressure is of the
7 tank. So, if you -- the -- whether it's
8 1800 or -- whatever your maximum --
9 whatever the pressure is in the tank at
10 the time -- and you would turn the valve
11 on and you'd watch the gauge go up on
12 the -- on the cylinder. When it --

13 Q. So --

14 A. -- hits 12:00, you're done.

15 Q. So I'm going to hand you what's
16 been marked as Defendant 's Exhibit 6, and
17 I understand this is a test cylinder, but
18 I also understand that the valve is much
19 the same.

20 A. Yes.

21 Q. When you say you look at the
22 gauge to see that it's filled up, is it
23 the gauge that's on the agent tank?

24 A. Yes.

25 Q. So, looking at Defendant 's

Page 85

1 Exhibit 6, you can't see that gauge
2 straight on; you're kind of seeing it from
3 the side; right?

4 A. Correct.

5 Q. That's the gauge you're talking
6 about that you look at?

7 A. Yes.

8 Q. And do you look to see if it
9 goes up to the green?

10 A. Straight up at 12:00. That's a
11 full -- that's a full charge.

12 Q. And you would do that if you
13 were filling a Pyro-Chem tank?

14 A. Any -- any agent -- anything
15 that has a gauge on it, you have to watch
16 that gauge go up; otherwise, something's
17 wrong.

18 Q. Okay. So the equipment that
19 you're using is, you're using the tanks,
20 you're using some connection devices, and
21 above them is going to have a handle on it
22 that you can turn off and on the flow
23 of --

24 A. Yes.

25 Q. -- nitrogen?

1 A. Yes.

2 Q. Is -- I'm handing you what's
3 been marked's Defendant's Exhibit 7 and
4 there's an item called a quarter-turn ball
5 assembly. If you could look at that, it's
6 the middle or the bottom picture. Is
7 that -- I'm not -- I don't know if that's
8 the same one?

9 A. That's the same one. It's the
10 exact same setup. This is what was used
11 off the cascade system, which is the same
12 setup that I have on the nitrogen
13 system --

14 MR. FROMSON: Hold it up.

15 A. -- because you have to have --
16 you have to have some way of shutting your
17 air off, besides going back to the tank.
18 So it -- an in-line ball valve. You crack
19 it open for a little air, or you can go
20 all the way, or -- and as you -- as the
21 gauge is -- you reg-- this -- this
22 basically -- basically regulates the
23 amount of flow going into the tank, at
24 your discretion.

25 MR. FROMSON: What exhibit is

1 that?

2 THE WITNESS: 7.

3 MR. FROMSON: Thank you.

4 Q. And the picture that's above
5 that is another fitting. Which side does
6 it go -- does that go into the tank, or
7 can you tell?

8 A. Oh, boy. I got to-- it's been a
9 while.

10 Q. I guess I should ask first:
11 Would that be a fitting that's also used
12 both when you're filling agent tanks and
13 using the cascade --

14 A. Yes.

15 Q. -- system?

16 A. Yes. This is -- okay, this
17 (indicating) part here, like I said
18 before, coming out of the tank, is a
19 half-inch port. This is the half-inch
20 nipple (indicating). So your flow of air
21 is going this way (indicating), because
22 here's your tank (indicating), here's your
23 valve (indicating), here's your nipple
24 (indicating), here's your adaptor
25 (indicating), and then what we did was

1 this (indicating) went into here
2 (indicating) as an extra adaptor, because
3 this (indicating) has the ball valve on it
4 for shutoff.

5 Q. Okay. So they basically -- the
6 picture that's on the front, that fitting
7 would go on first and -- and --

8 A. And you'd hook into either here
9 (indicating), or you could hook this
10 (indicating) into here (indicating),
11 because you notice that's the male and
12 that's the female. So you can quickly --
13 you can actually put an extension on it.

14 Q. But the larger side of the top
15 fitting would be the one that would screw
16 into the tank?

17 A. Correct.

18 Q. And am I correct that the
19 smaller side of the top fitting would
20 quick connect --

21 A. Onto here (indicating).

22 Q. -- in -- and hold up -- can you
23 just --

24 A. Yup.

25 Q. -- hold that up and point to

1 where that --

2 A. This (indicating)-- this would
3 go to the tank, this (indicating) would go
4 into here (indicating), because this
5 (indicating) is the male and that's the
6 female (indicating), and this (indicating)
7 would go hook into the line.

8 Q. Okay. So, essentially, you've
9 got your tank with your gauge on it;
10 you've got these two fittings leading to
11 the air hose --

12 A. (Nodding)

13 Q. -- and then what's next?

14 A. Your tank, your connection, your
15 line, and then you have your fill site,
16 which is either going to be nitrogen -- or
17 this happens to be the compressed tanks.

18 Q. When you were doing filling of
19 the --

20 A. Fire extinguishers?

21 Q. Right now we're talking about
22 recharging.

23 A. Correct.

24 Q. When you're doing recharging,
25 was there a regulator in there somewhere?

Page 90

1 A. Off the tank, two-stage
2 regulator. If you look at it real -- like
3 real close, if you follow that tank,
4 there's a two-stage regulator on there.

5 Q. The two-stage regulator, when
6 you say it's off the tank, it's off the
7 nitrogen tank?

8 A. Correct.

9 Q. Okay. And then you would look
10 at the gauge on the agent tank, and when
11 that would get to the green, you'd know to
12 turn the valve --

13 A. (Indicating)

14 Q. -- and stop the air?

15 A. Right.

16 Q. The regulator that was used to
17 recharge tanks that was with that nitrogen
18 tank, is that is the same type of
19 regulator that's used with the Poseidon
20 system?

21 A. Yes. It was a -- it was a
22 two-stage regulator.

23 Q. But I guess the Poseidon system
24 was purchased with the regulator on it --

25 A. Correct.

1 Q. -- is that correct?

2 A. Correct.

3 Q. Was this a regulator that just
4 came with the nitrogen tank or --

5 A. It's a whole -- no. It's a --
6 it's a normal two-stage regulator that you
7 can use in the industry.

8 Q. But it may be a different
9 manufacturer or something?

10 A. Exactly. Exactly. Yes.

11 Q. Well, it sounds like it's a
12 similar setup --

13 A. Same concept.

14 Q. -- whether -- whether you're
15 doing a compressed air tank or whether
16 you're recharging a cylinder --

17 A. Correct. Yes.

18 Q. -- an agent tank?

19 A. An agent tank, yes.

20 Q. Thank you.

21 A. Okay.

22 Q. It's -- I understand it's --

23 A. ... the clarification, yeah,
24 let's you...

25 MS. STIGALL: You're doing very

Page 92

1 well, but I think I need a break. So
2 can we take -- would ten minutes be
3 okay?

4 THE WITNESS: Fine with me.

5 THE VIDEOGRAPHER: Okay. We're
6 going off the record. The time is
7 11:35.

8 (Brief recess.)

9 THE VIDEOGRAPHER: We are back
10 on the record. The time is 11:54.

11 MS. STIGALL: While we were
12 taking a break, Patty Scott provided
13 me with some pages that relate to
14 various contacts that were made after
15 the incident, and I have seven pages
16 that we will mark as Defendant's
17 Exhibit 18.

18 (Defendant's Exhibit 18, seven
19 pages that relate to various contacts
20 and background information made after
21 the incident, marked for
22 identification, this date.)

23 BY MS. STIGALL:

24 Q. And can you identify those as
25 pages put together relating to contacts

Page 93

1 and background information that was
2 collected after the incident by your wife
3 or you?

4 A. That's everything, yes.

5 Q. Thank you.

6 Let's talk a little bit about,
7 again, about filling -- well, we were
8 talking about recharging fire
9 extinguishers. Now let's switch gears a
10 little bit and just talk about
11 refilling -- I'm sorry, refilling agent
12 tanks is what we talked about before;
13 correct?

14 A. (Nodding)

15 Q. Yes?

16 A. Yes.

17 Q. I just want to switch gears a
18 little bit and talk about the process of
19 refilling a fire extinguisher with agent,
20 and would that be nitrogen also?

21 A. Yes.

22 Q. So it's my understanding, from
23 what we talked about before, that that's
24 what was done at the station, and we held
25 this up for the camera before that's on

Page 94

1 Defendant's Exhibit 9.

2 A. Yes.

3 Q. Okay. And can you, in the same
4 way that when we talked about the
5 recharging of agent tanks, can you tell me
6 what were the connections made along the
7 way from the compressed gas cylinder until
8 we're going into the extinguisher tank.

9 A. Coming off the tank, you have a
10 two-stage regulator; off the two-stage
11 regulator, you have a line of -- whatever
12 length -- to the work bench; you'd have a
13 ball valve which would be a control valve
14 or ball valve; and after the ball valve
15 would be a -- a quick connect which would
16 be a female connection, which, in turn,
17 would hook into the male connection of
18 the -- that will be threaded in on a male
19 thread of it, which will go into the fire
20 extinguisher valve head -- and there's
21 different connections, because every fire
22 extinguisher has a different valve
23 assembly. So you can have -- probably
24 have at least seven or eight different
25 connections, because each fire

1 extinguisher has their own fitting.

2 Q. Did you train Christopher Foust
3 on the filling of fire extinguishers?

4 A. Yes, I did.

5 Q. And as part of your training
6 with Christopher Foust, did you speak with
7 him about the dangers that are inherent in
8 filling containers with compressed gas?

9 A. Yes, I did.

10 Q. What did you tell him?

11 A. Basically, that it's a -- the
12 fire -- the tank on the wall is a
13 pressurized vessel, high pressure,
14 nitrogen; you have to set your gauge at a
15 certain pressure in order -- if -- if
16 you're pressurizing the fire extinguisher
17 to 195 pounds, you can't try to fill it
18 when you only put 100 pounds in. You have
19 to have at least 195 pounds or greater.
20 25 pounds -- the standard is, if the 195
21 pounds pressure, which is 99 percent of
22 the fire extinguishers on the dry
23 chemical, once you pressurize it, 25 per--
24 25 p.s.i. greater is the maximum. So if
25 you have 195 pounds going in to the tank,

1 you need 25 to pounds more, which is 220?
2 That's the maximum. I explained that to
3 him, it's a pressurized vessel, that
4 there's a procedure -- you have the ball
5 valve, you got the handle, and the whole
6 nine yards. I explained the whole thing;
7 that if the gauge doesn't go up when you
8 put 200 pounds of nitrogen, stop what
9 you're doing. It's gonna max out at the
10 maximum anyway, so the chance of anything
11 happening isn't -- is slim to none, but if
12 something -- if the gauge doesn't go up,
13 something's wrong; either you didn't -- it
14 didn't bump, powder's caked, or you got a
15 bad gauge, start all over again.

16 Q. So you said it's going to stop
17 at the maximum. Do you mean the maximum
18 that the regulator is set?

19 A. Maximum set the regulator, yes.

20 Q. Did you train Christopher Foust
21 on setting the regulator based upon
22 looking at the p.s.i. of the fire
23 extinguisher?

24 A. Yes.

25 Q. So would I be correct in knowing

1 in -- in -- would you then say that
2 Christopher Foust knew he needed to look
3 at what pressure the fire extinguisher was
4 rated at?

5 A. Yes.

6 Q. And you taught him to do that?

7 A. Yes, I did.

8 Q. And did you discuss with
9 Mr. Foust if a cylinder is
10 overpressurized, something -- somebody
11 could be get hurt?

12 A. Yes.

13 Q. Tell me what you told him.

14 A. Basically, if it's
15 overpressurized, there's -- it's a
16 limited -- there's a limitation that if
17 you -- you can point so much air into --
18 you can only put so much air into a
19 cylinder before something's going to
20 happen. If it goes below -- if you're
21 going over 12:00, over -- over 12:00,
22 which is what the gauge is set at, and
23 nothing's happening, or something
24 shouldn't happen, stop what you're doing.

25 Q. And did you explain to him why?

1 A. Oh, yeah. I explained to him
2 that the tank can only hold so much
3 pressure.

4 Q. And did you explain to him the
5 tank could explode?

6 A. Probably not. But I think he
7 was smart enough to realize that, because
8 just -- he was very crafty and very handy
9 and very mechanically inclined, so -- he
10 worked for a body shop part-time and he
11 knew all about air pressures and tires and
12 everything else. You know, when you --
13 when something's going to -- if -- you
14 know, everything has its limits and he was
15 very knowledgeable about that.

16 Q. Do you feel like you know -- you
17 knew Christopher Foust well?

18 A. After three years, yes.

19 Q. And based upon your knowledge
20 working around him in a shop for the three
21 years, where there are pressurized tanks,
22 is it your understanding that he was
23 the -- he would know that compressed gases
24 can be dangerous?

25 A. Yes. I was comfortable with

1 that.

2 Q. And he would know that he needs
3 to check what are the pressures on a
4 cylinder that's marked with a pressure?

5 A. Yes.

6 Q. And would you expect that he, in
7 training Mr. Buono, that he would relay
8 that information?

9 A. If at the time to be trained,
10 yes.

11 Q. So the pressure regulator that
12 was used at the nitrogen tank, that would
13 be adjusted depending upon the pressure in
14 the fire extinguisher --

15 A. Correct.

16 Q. -- is that correct?

17 A. When you had said it -- you had
18 said it in the morning, and
19 unless you're -- you would -- you got 12
20 fire extinguishers, you don't have to set
21 the pressure 12 times. Once you put one
22 at 195 pounds, you set it for 25 pounds
23 over, you set it and forget it. At the
24 end of the day, you'd back off your
25 regulator and like you shut -- when you

Page 100

1 shut tank off, you always backed off your
2 of regulator to zero, because you don't
3 want pressure on the line. That was the
4 procedure also. But once you set that
5 regulator, unless you get a different tank
6 pressure, which wouldn't happen, or, if
7 you did, you would adjust it accordingly.

8 Q. When you say "set the
9 regulators", it's basically to put it at
10 the --

11 A. It's a --

12 Q. -- at the --

13 A. It was a two-stage regulator, in
14 the center was a -- it's a diaphragm. And
15 you would counterclockwise to decrease it,
16 counterclockwise (sic) to increase it.

17 Q. What about the regulator at the
18 Poseidon system? Was that adjusted?

19 A. Yes.

20 Q. How was that adjusted?

21 A. Again, it's a two-stage
22 regulator, one tank -- one -- one port
23 coming off the last tank, or the cascade
24 system tank, and the other line going to
25 the fill, and it was a -- that was a

1 different type of a regulator, where it
2 was a dial, so you would -- again,
3 counterclockwise to decrease,
4 counterclockwise -- or clockwise to
5 increase, and you would set it the down to
6 zero and set it as you would go.

7 Q. Just like with the
8 extinguishers, was it your understanding,
9 based upon your training of Christopher
10 and our working around him for three
11 years, that he was aware of the dangers
12 inherent in handling compressed gas
13 cylinders?

14 A. Yes.

15 Q. Including the test cylinder at
16 the issue?

17 A. Yes.

18 Q. And it would be your
19 understanding, based upon your training
20 and working with him, that he would have
21 been aware, by looking at that cylinder,
22 what the appropriate fill pressure was?

23 A. Yes.

24 Q. Because you taught him to look
25 for that?

1 A. Correct. Yes, I did.

2 Q. It's stamped on the tank, isn't
3 it, the 225?

4 A. No. The 225 -- uh... that tank
5 was only 175. It was on the gauge.

6 Q. So 175 --

7 A. 175 was on --

8 Q. -- was on the gauge?

9 A. -- the gauge, yes. The DOT --
10 the DWDLTBW (ph.) (sic) 225 was the DOT --
11 the DOT number.

12 Q. Right.

13 A. Correct.

14 Q. The little green arrow --
15 area on the tank --

16 A. 12:00.

17 Q. -- said "Fill to 175"?

18 A. Correct.

19 Q. That's where you're supposed to
20 put it?

21 A. Yes, ma'am.

22 Q. In the time when Franklin Buono
23 was working at Oprandy's prior to the
24 incident, was he engaged in an argument
25 with Christopher Foust?

1 A. I don't know. From what I'm
2 hearing, there was some arguments prior to
3 that morning. I was not there to witness
4 it, but, from hearsay, yes.

5 Q. Okay. And I understand you
6 didn't hear the arguments, but I'd like to
7 know is who heard the arguments and what
8 they heard.

9 A. I had a young girl who worked
10 for me, told my wife Patty that on
11 occasion she would hear Frank Buono and
12 Chris arguing about something. I don't
13 know what the particular details were, but
14 I do know that, when Patty would come in
15 at 10:00, there would be no more arguing,
16 so... let's read between the lines or
17 whatever, but I wasn't there to witness
18 anything, but that's what I'm hearing.

19 Q. Who -- can you give me her name,
20 the young girl?

21 A. Kimberly Tremberger,
22 T-r-e-m-b-e-r-g-e-r.

23 Q. Where does she live?

24 A. Pine Bush, New York. She come
25 in -- she worked a couple of hours a day.

Page 104

1 She -- she was working a couple of hours a
2 day. Her brother works -- worked --
3 worked -- works and still does work for
4 me. Kimberly doesn't -- doesn't work for
5 me anymore. But she was -- they actually
6 walked in right after -- yeah, they walked
7 in on the accident. Just -- yeah, I think
8 when they pulled into the parking lot was
9 when all -- everything else happened,
10 so...

11 Q. I thought you said --

12 A. But she wasn't -- it was 9:00 in
13 the morning. They didn't come in until
14 like probably 9:00 -- yeah, 9:00, 9:30
15 that morning, yeah. She worked part-time.
16 So -- but she walked in on the accident.
17 But, prior to accident, she was there
18 whatever days of the week we had her
19 scheduled for.

20 Q. So you're saying she wasn't
21 there on the morning of the accident
22 before it happened, but on prior mornings
23 she --

24 A. She was there.

25 Q. -- heard this arguing?

1 A. Yeah, she
2 will -- because -- yeah, like they will
3 start at 8:30. She would come in like a
4 quarter of nine, ten of, with her brother,
5 and between that 9:00 and 10:00 window,
6 she would hear 'em arguing.

7 Q. So maybe her brother heard them
8 arguing also?

9 A. Probably not, because, when he
10 would come in, he would go out with me on
11 the road, so I would say no.

12 Q. What's his name, just --

13 A. William.

14 Q. William Tremberger?

15 A. Tremberger, yeah.

16 Q. T-r-e-m-b-e-r-g-e-r?

17 A. ... g-e-r, yes.

18 Q. Did you ever hear from any
19 source what they were arguing about?

20 A. No.

21 Q. And I'm going to ask you --
22 because I heard this -- did you ever hear
23 that there was any type of argument or
24 disagreement between Frank Buono
25 Christopher Foust concerning drugs?

1 A. I -- I never heard anything
2 about it. I don't know what Kimberly had
3 to say about it. She can maybe tell you.
4 I don't know, but I -- I personally never
5 heard anything about it.

6 Q. But you never -- I'm not the
7 saying you hearing it, but did you hear
8 from any other source that that was what
9 the argument was about?

10 A. I'm going to say yes.

11 Q. And who did you hear that from?

12 A. I didn't hear it from employees,
13 but I heard it from outside sources that
14 something was -- something was going on,
15 but, to try to pinpoint it to my place of
16 business, I mean, I couldn't. But you
17 know what they call rumors?

18 Q. Well, what were the outside
19 sources? And I understand --

20 A. People who knew Chris.

21 Q. Well --

22 A. Chris came from a big town, his
23 father was a cop, worked in a body shop.
24 You hear all this after the fact.

25 Q. What's his father's name?

1 A. Randy.

2 Q. Foust?

3 A. Yes.

4 Q. And he's a --

5 A. Retired --

6 Q. -- police --

7 A. Retired police officer in the
8 Town of Warwick. You hear all the rumors
9 after the fact, but put one and two
10 together...

11 Q. Christopher Foust passed away?

12 A. Correct.

13 Q. Do you know what he died from?

14 A. Again, drugs. That's what the
15 word on the street is, seven month --

16 Q. Illegal drugs?

17 A. Excuse me?

18 Q. Illegal drugs?

19 A. I'm going to say yes. Seven
20 months after the accident, September --

21 MS. SCOTT: 20.

22 A. Right around the 20th.

23 Q. Of 2016?

24 A. Correct.

25 Q. Were you on good terms with

1 Chris after the accident?

2 A. Absolutely. Patty and I went
3 down and saw him at the hospital, he took
4 us right on his wheelchair, showed us a --
5 you know, he was in very good spirits, I
6 actually cried on the way out the door,
7 and then we picked up him up probably --
8 that -- when he got released from the
9 hospital -- picked him up, went out to one
10 of my restaurant accounts and took him out
11 to dinner. Rode right next to me in the
12 front seat. Oh, yeah. We had no -- we
13 did -- and -- and -- and he -- first thing
14 he said to -- matter of fact, his father,
15 the night of the accident, called me,
16 after all the dust settled, and actually
17 said to me, he says, "Don't hold yourself
18 responsible for what my son did." And he
19 said -- and Chris said the same thing. He
20 says, "It's not your fault." He says,
21 "I'm -- I'm still your friend." He loved
22 us -- he loved us both. We're like a
23 family to him.

24 Q. Did Chris ever talk to you about
25 what he thought caused the accident?

1 A. No, but small town, the fire
2 department who handled the call,
3 his -- stone throw from my shop, I'm a
4 past fire chief from the same town, and I
5 was told by one of the fire departments
6 that, when he was conscious through this
7 whole thing, all I heard him say was, "I
8 didn't hear the air flow, so I opened up
9 the valve more," or "...full bore."
10 That's exactly what he told him, and then
11 after that, that's all -- everything else
12 is... .

13 Q. You mean, as he's laying there
14 after he was --

15 A. Oh, as they were treating him.
16 He was conscious through this whole thing.
17 He said right to 'em, "I didn't open up --
18 I didn't hear..." it was a cold morning,
19 first of all. It was the coldest days in
20 February and they filled the tank, had a
21 heater right above 'em, and he actually
22 told him, he says, "I didn't hear -- I
23 didn't hear the air flowing, so I opened
24 up the valve..." either "full bore" or
25 "more," and take it from there.

1 Q. And as a person that's done that
2 same filling operation --

3 A. Uh-hum.

4 Q. -- before and done it many
5 times --

6 A. Absolutely.

7 Q. -- and taught him how to do
8 it --

9 A. Correct.

10 Q. -- what does that mean to you,
11 "opened up the air flow full bore or
12 more"?

13 A. He was distracted. Something
14 had to distract him, and it wasn't the
15 heater.

16 Q. So he is not hearing the air
17 flow and he's just intent on --

18 A. Right. Let me explain --

19 Q. -- blowing that air in there?

20 A. -- to you. You gotta remember
21 something. You had a quick scenario, to
22 bring everybody up to speed here. You
23 have four large tanks of air. Okay? You
24 have a small tank you're going to fill.
25 And the word "cascade" means you're

Page 111

1 transferring air from A to B, whether you
2 use one tank, four tanks, two tanks.

3 Okay? As you hear that air flow...

4 THE WITNESS: ... and you know
5 this being with Worthington...

6 A. ... you're filling the small
7 tank, you're going to hear that air flow.
8 That's why it -- that's how they got the
9 word "cascade"; you're cascading air flow
10 from A to B through a series of lines,
11 gauges, and devices. He didn't hear it,
12 bang! Hit the valve. Like that throttle
13 that you -- just pchoo! (ph.) Because
14 otherwise, if you don't have the valve,
15 the only way you can shut that tank off is
16 off the wheel assembly on the valve on the
17 tank itself, which is more -- it's harder
18 to get to. That's why they put a ball
19 valve on it --

20 Q. So he --

21 A. -- for shutoff.

22 Q. -- he didn't hear the air flow,
23 and so he just starts throttling it even
24 more?

25 A. Exactly. Exactly. He increased

1 the flow of the cascaded (sic) of air.

2 Q. Who heard that?

3 A. Chris.

4 Q. I mean --

5 A. Oh.

6 Q. He said that there was --

7 A. He said that to -- to whoever
8 was -- the guys that were treating him on
9 the fire -- from the fire department.

10 Q. Do you know who?

11 A. Uh!

12 MS. SCOTT: I have it written
13 down. It was Danny --

14 A. Danny Truex.

15 MS. SCOTT: -- Truex.

16 A. Because I know these guys,
17 because he's actually had to be a
18 local -- a local plumber, and they all
19 know me, I've been in this, you know, and
20 he actually said to me, he says, probably,
21 I would say, maybe four months after it
22 happened, "Yeah, we got talk-- we're on
23 the job, we're doing the job together, and
24 he said to me, he said, 'Oh, yeah, by the
25 way,' and he says -- Oh, he told me -- he

1 told me -- he says, 'Oh, I didn't hear the
2 heat -- I didn't hear the heater on, full
3 bored the valve.' "

4 Q. Dan T-r --

5 A. Truex, T-r-u-e-x.

6 Q. And he's with the --

7 A. The fire department.

8 Q. There in Middle --

9 A. Middletown.

10 Q. Can you think of any reason --
11 well -- that Dan Truex would have to lie
12 or to make --

13 A. No.

14 Q. -- that up?

15 A. No, he wouldn't, no.

16 Q. You know him?

17 A. Oh, I know him. Yeah, I know
18 him. He wouldn't have made it up. No
19 reason to.

20 Q. And I know all this is difficult
21 to talk about, but what did you hear --
22 you said you heard that Chris died from
23 illegal drugs. Any details --

24 A. We --

25 Q. -- what kind of drugs?

Page 114

1 A. What do you think it was?

2 Fentanyl.

3 Q. Okay. Who else -- okay. We
4 talked about who worked at your shop. You
5 worked there that -- for a while Kimberly
6 Tremberger was there, William Tremberger
7 was there, I think maybe your wife works
8 there some, Patty?

9 A. Uh-hum.

10 Q. Who else was working? And maybe
11 not exactly when the accident happened,
12 but who were the employees?

13 A. I have -- at that time, I
14 have -- well, I have three other
15 employees.

16 Q. And who were the three others?

17 A. Kevin Slover, S-l-o-v-e-r. He's
18 been with me -- he's my number two man;
19 Robby Hawkins, Patty's son --

20 Q. Robin?

21 A. Robert.

22 Q. Robert --

23 A. Hawkins.

24 Q. -- Hawkins.

25 A. -- and Rick Dillon from Catskill

1 Fire. Rick -- Rick worked for me after
2 the purchase. Is that right? One, two --
3 I count now, myself, dah, dah, dah, dah.

4 Q. It seems like there was --

5 A. That's it.

6 Q. -- somebody named Arlene that
7 answered the phone.

8 A. That's as of now.

9 Q. Okay. Not back then?

10 A. No.

11 Q. Okay. As far as filling test
12 tanks with air, did anybody do that other
13 than you and Chris?

14 A. I know Kevin didn't. I don't
15 recall Robby. I mean, he -- Robby was in
16 my shop when I was in Florida, then I put
17 him on the road. So I'm going to say
18 probably not.

19 Q. And then Rick Dillon?

20 A. No.

21 Q. They were more out in the field?

22 A. Correct. Correct.

23 Q. Occasionally I have to kind of
24 stop and go through my notes and see where
25 I am, so just bear with me for a few

1 minutes.

2 You know what? Let -- one thing
3 I haven't done is just gone back a little
4 bit over your background.

5 What's your date of birth?

6 A. 18 days from today, May 20th,
7 1959.

8 Q. We're really close in time.

9 And where were you born?

10 A. Middletown. Lived in Warwick.

11 Q. As far as your educational
12 history, where did you go to high school?

13 A. John S. Burke Catholic High
14 School, 1973 to '77.

15 Q. And did you go to college?

16 A. Orange County Community College
17 from 1977 to 1980.

18 Q. And did you get any sort of --

19 A. Yes.

20 Q. -- degree?

21 A. I have a degree in retail
22 business management, associate's degree.

23 Q. And I don't probably need to go
24 back over every job you've ever had.

25 A. Didn't have that many.

1 Q. Well, tell me, so what would
2 have been one of your first major types of
3 employment? I'm talking other than
4 working at a mop and pop restaurant or --

5 A. 1984 to 1987.

6 Q. And what was that?

7 A. Georgia Pacific Paper Company.

8 Q. Is there a plant here?

9 A. There was.

10 Q. What did you do there?

11 A. I was a machine operator.

12 1987 to 1992, worked for
13 Hercules, PFW, as a materials handler. In
14 the meantime -- in between those jobs,
15 from 1979, I bought the business. That
16 was my side job. That was my benefits
17 job.

18 Q. The business being --

19 A. I owned it, Oprandy's. I bought
20 Oprandy's in '79, you know, dabbled with
21 it as a part-time hobby, selling fire
22 equipment and, you know, I got married and
23 then had kids and, you know, move on, move
24 on, and then in 1992 I got laid off from
25 Hercules, I couldn't collect unemployment,

1 and so I went full bore with this
2 business, 27 years ago.

3 Q. And then I think it was in 2000
4 when you bought part of another
5 person's --

6 A. I bought -- I bought a couple of
7 companies since 19 --

8 Q. Okay.

9 A. I bought a couple of companies
10 since -- I bought a couple since 1979. As
11 a matter of fact, three to be exact.

12 Q. Would Oprandy's be the only
13 business that you had that -- where you
14 dealt with cylinders that contained
15 compressed gas?

16 A. Yes.

17 Q. I thought somewhere you said you
18 were a firefighter?

19 A. Oh, yeah. I did 30 years of
20 fire service, as a volunteer.

21 Q. Where did you say?

22 A. I started in Warwick, eight
23 years, and ended it 21 years in Howells,
24 and I was chief 2007. Right up the lines.
25 Done.

1 Q. That was your last year there?

2 A. 2007, yeah.

3 Q. Okay. And of course as a
4 firefighter, you're dealing with
5 compressed gases, without a doubt?

6 A. The compressor in question, I --
7 I was the air guy at the firehouse when
8 they bought it, from 1989 to 2000, so -- I
9 trained the guy -- I -- we trained -- we
10 got trained by Poseidon. I trained all
11 the guys in my firehouse, when I was a
12 black hat or a white hat, and that's the
13 reason I bought it, because I got a record
14 with it and I just rolled it over to my
15 shop.

16 Q. Did you ever deal with anybody
17 at Poseidon that you remember, anybody --

18 A. Dana. Dana Blakely. Dana was
19 the person who sold us the compressor in
20 1989. He was one of the ones who used to
21 service it, when I was handling with him,
22 when I was in the fire district, and he
23 was the one who came to Florida, New York
24 when I had it and serviced it.

25 Q. Do you know if he serviced the

Page 120

1 system at any time -- let's just say since
2 about 2014, 2015?

3 A. I don't know when it was
4 serviced last. I don't know when it was
5 serviced last. I want to say late '14.

6 Q. I'll tell you that we did take
7 his deposition in this case.

8 A. Okay. So he knew -- he knew who
9 I was.

10 Q. Have you had any contact with
11 him about either this incident or this
12 lawsuit?

13 A. No. No. I don't even know --
14 is he still with the company? Like I
15 said, it's been over two years.

16 Q. Well, there have been some
17 changes.

18 A. Okay.

19 Q. It's a little different now,
20 but that's kind of what we got into --

21 A. Sure.

22 Q. -- with the deposition, so...

23 Do you belong to a union?

24 A. No.

25 Q. And your employees don't --

1 A. No.

2 Q. -- belong to a union?

3 How did you first come to know
4 Christopher Foust?

5 A. To be honest with you, I knew
6 his father for years. At one time, I
7 had my -- my -- the -- on the record, I
8 have a twin brother.

9 Q. Oh, okay.

10 A. My twin brother and I had our
11 own lawn mowing business, and Chris's
12 father, Randy, worked for the police
13 department, used to mow lawns with me. So
14 I've known him for years. Some place I --
15 I don't remember -- he must have bumped
16 into me and said, "Hey, my son Chris is
17 looking for a job and that's when I was
18 growing, expanding, I put Robby -- took
19 Robby off the road, her son, out of the
20 shop, put him on the road, and that's how
21 it happened. He came in, I explained
22 everything to him, and we sat -- sat down
23 with him, this is what we do, bing, bing,
24 bing, bing, bing, and he had some
25 exceptions, he had some issues that he had

Page 122

1 to address. He was a single dad, he had a
2 three year old daughter, he says -- who is
3 going to school in Florida, New York,
4 which is where my old office was, so I
5 made his employment very, very
6 accommodating to him to get my work done.
7 Okay?

8 He said, one morning, "I'm gonna
9 be late. I'm gonna -- gotta take my
10 daughter," this, this, this. I worked
11 around his schedule. He got paid 40
12 hours. If I needed anything -- I mean, I
13 -- he was -- I was accommodating to him.

14 Q. Was he good employee?

15 A. Oh, yes. Work ethics were very
16 good. The kid was very, very mechanical
17 inclined, crafty, he had a helicopter's
18 pilot I found out. Would I want to fly
19 with him? I don't know. But he had a
20 helicopter's license.

21 When I moved into my new
22 building, he did all my IT for me. He
23 says, here's -- here's the list, get me
24 the material, I'll come up one night with
25 my daughter, buy me -- give me coffee,

Page 123

1 throw me a little bit here, I'll wire your
2 whole building.

3 Did the whole computer
4 off -- off hours. I mean, I had no
5 complaints with the guy.

6 But, bottom line is, and this
7 whole day, got distracted.

8 Q. Did you come to know Frank Buono
9 the short time he was your employee?

10 A. No.

11 Q. Do you have any assessment of
12 his work as an employee in the time he was
13 there?

14 A. No. Basically, I hired him, I
15 explained to him, same way I explained
16 everything to Chris, as far as procedures,
17 that you'd be working with Chris, here's
18 our protocol for the day, what time we
19 start, our hours of operation -- you know,
20 like a normal employer would do -- rate of
21 paid, employee handbook received, the W-9
22 for the taxes, when payroll is, be prompt,
23 bing, bing, bing, and, after that, I
24 rolled it -- I -- I introduced him to
25 Chris, you two work together on this.

1 Chris would be the one who would
2 rely (sic) to me -- would come back to me
3 any problems or issues, feedback, or
4 anything else.

5 So, basically I -- I trained
6 Chris, Chris trained him, and that's how
7 it worked.

8 Q. Have you served in the armed
9 forces?

10 A. Who, me?

11 Q. Yes.

12 A. No.

13 Q. Did Chris ever talk to you about
14 what happened on the day of the incident?

15 A. Both times we talked, we were --
16 when we saw him at the hospital, and then
17 we saw him at the dinner, really didn't --
18 really didn't say "I screwed up" or didn't
19 really say any particulars. His sense of
20 humor was great, his outlook was great.
21 It's like, if he didn't have -- lost his
22 leg, he would -- it just would have been a
23 regular day. I mean, he -- his sense of
24 humor was very good. Like I said, his
25 outlook in life was very good. "Hey, it

Page 125

1 was an accident." Exact -- he basic-- "It
2 was an accident. It's not your fault."

3 Q. Tell me about what you saw on
4 the day of the accident. Let's just start
5 at the very beginning.

6 A. I've been waiting for this.

7 Q. What was the first thing that
8 you remember? Now I'm not talking about
9 boom, the accident happened. I'm talking
10 about what's the first thing you remember
11 in terms of any contact you had with
12 either Chris or Frank that morning.

13 A. I was waiting for you to ask
14 this. Let's go the chain of events --

15 Q. Okay.

16 A. -- from start to finish. I live
17 ten minutes from my office. I got to my
18 office that Friday morning probably 8:15,
19 8:20. It was a gentleman from the gas
20 company, a friend of mine, who was waiting
21 for me to open up. I had to bring him
22 a -- he needed a regulator -- a regulator
23 for his beer gas, and that was around
24 8:25, 8:30, you know, I unlocked the door.

25 That particular day, both Chris

1 and Frank -- Chris had to do something
2 with his daughter in the morning, take her
3 to school. He says, "I'll be in late,
4 9:00." Frank says, "I'll come in at
5 9:00," and they punched in about 8:50,
6 8:55. Okay? He checked in, set himself
7 up, checked the heat, everything else.

8 About, if not close to 9:00, I
9 know the guy from either the power company
10 or another guy had walked in --

11 MS. SCOTT: Nels.

12 A. -- at the same -- Nelson Tree.
13 I had an account with Nelson Tree Service
14 and the gentleman came in with a couple of
15 fire extinguishers. He says, "I need
16 these retagged, recharged, and I wanna buy
17 three new ones." He wanted three fire
18 extinguishers inspected, "I want to
19 purchase three more."

20 I said, "Okay.

21 He says, "I'll wait outside in
22 my truck; I got some paperwork to do."

23 I said, "Okay."

24 With that said, I gave Frank his
25 first job. "Here's three brand new fire

1 extinguishers," took them off the shelf,
2 "tag 'em, work on these three."

3 "I will."

4 "The gentleman's waiting for
5 'em."

6 I said to Chris, "Here's the air
7 tank. I've gotta do a balloon test at
8 11:00 at a deli with the local fire
9 inspector. I need this tank done."

10 With that said, Chris went to
11 fill the tank, Frank was supposedly doing
12 his job, "I'll be in the office; I gotta
13 make a phone call."

14 Now, the way my office is set
15 up, I have two entry doors, one to the
16 shop, one from the shop to the back room
17 of where this air compressor is -- they
18 were both closed -- heat's on, warm -- it
19 was cold. I'm on the phone, all of a
20 sudden, I hear, boom! Like, did you ever
21 hear the furnace malfunction? That's
22 exactly what it sounded like.

23 I said to the guy, I says, "I'll
24 call you back." Okay?

25 I go out --

Page 128

1 Q. Let's stop you right there and
2 we'll go on with that, the rest.

3 I'll represent to you that Frank
4 Buono testified several days ago than you
5 handed him, or you told him, to fill the
6 test tank with air.

7 A. Absolutely wrong. He had no
8 training. Why would he want to do it?
9 That's a lie.

10 Q. Your testimony is that you gave
11 Frank three fire extinguishers to work on
12 and that you told Chris to fill the tank?

13 A. Yes.

14 Q. And that you never asked Frank
15 Buono to fill the test tank?

16 A. That's correct. Also, that tank
17 that was -- that's in question here, and
18 two other tanks, were filled by Chris
19 exactly one week ago, same procedure, same
20 person. So why would I have somebody else
21 who knows nothing about it to do it, where
22 something could happen?

23 Q. Okay. I just wanted to make --

24 A. Oh, no.

25 Q. -- sure we --

1 A. Oh, no.

2 Q. -- we got your testimony?

3 A. Absolutely.

4 Q. At any time, while --

5 A. Hold, hold, hold. Let me -- let
6 me just stop you for a second. You're
7 saying that he told you that he --

8 Q. He told us that -- he testified
9 that you asked -- Chris Buono testified
10 that you asked him to fill the agent tank
11 or the -- the test tank.

12 A. Okay. How come in his first
13 deposition that we just showed you this
14 morning, he says that he was filling it
15 and then reversed it and said Chris was
16 filling it? So who's right and who's
17 wrong now?

18 Q. I --

19 A. Thank you.

20 Q. I -- I'm -- today, what I think
21 is important is that we get your version
22 of what happened. And the only reason
23 that I'm -- I interject what he said or
24 what anybody else said is that I wanna
25 make sure that what you're saying is your

1 testimony and what his is his testimony.

2 So --

3 A. We'll go one step further. I'll
4 give you the name of the gentleman from
5 Nelson Tree Service who saw me, told me,
6 witnessed me giving these extinguishers to
7 Frank Buono to take care of. He's not in
8 there. I'll give you his name and
9 everything.

10 Q. Well, it's -- I think it says
11 Henry --

12 A. Henry --

13 Q. -- Fairweather.

14 A. -- Fairweather.

15 Q. So he would be able to say that
16 you gave the three fire extinguishers to
17 Frank?

18 A. To take care of.

19 Q. So, before we go on with the
20 sequence of events, all I'm doing is
21 just --

22 A. Sure.

23 Q. -- clarifying, you never were
24 back in the room where the test cylinder
25 was going to be filled that morning

Page 131

1 immediately prior to them filling it --

2 A. No.

3 Q. -- in terms of seeing how things
4 are set up or anything?

5 A. Yeah, I might have -- well,
6 yeah, because I had to go in there and
7 turn the heat on and turn the lights on.
8 That was it.

9 Q. But in terms of having been in
10 there and seeing how the fill hose was set
11 up, how the connections were set up,
12 anything like that, you wouldn't have seen
13 anything about those specifics until maybe
14 after the accident?

15 A. Yes. That's correct.

16 Q. Okay. So you're in -- and we
17 can continue.

18 A. Go ahead.

19 Q. You're in your office, you hear
20 this loud noise. What happens next?

21 A. Well, I walked out to the shop
22 and the phone on the wall, the receiver is
23 hanging off the wall. I says, something's
24 not right here. And then I walk into the
25 next room and I can't see anything. All I

1 see is like a dust storm. All I hear is
2 two guys hollering, "My legs, my legs, my
3 legs." I thought it was a joke, and I
4 says, "What's going on?" All I heard
5 Chris say was "The tank exploded."

6 And I couldn't see nothing, so I
7 ran back in. Meanwhile, I ran back in, I
8 tried to dial 911. I was just in shock.
9 Henry Fairweather, who is outside in his
10 truck, came in, he tried to control me, I
11 says, "Something happened here. I don't
12 know."

13 And he -- he -- he says, "You're
14 as white as a ghost."

15 All I know is, after -- like the
16 first thing I did was I opened all the
17 doors, opened all the windows, turned on
18 the exhaust fan, tried to get the air
19 moving, just to see what we can see, and
20 the next thing I know, 911 calls back,
21 fire department shows up, I got a -- I
22 went out to the front of the building, I
23 notified the fire chief, I says, "I had an
24 explosion, no fire. I think I've got a
25 severe -- a severe leg..."

1 All I knew, I couldn't see
2 nothing. I says, "Put a helicopter on
3 standby. I'll be in my office." And I'm
4 just sitting there and Henry was in there
5 trying to console me and that's -- and
6 everything else the fire department took
7 over. Everything else was taken over by
8 the fire department.

9 I just stayed out of it and then
10 all -- that's -- that's when all hell
11 broke loose. It was just --

12 Q. Did you ever, after you had
13 the -- heard the loud noise, did you go
14 into the room where the cylinder was being
15 filled prior to the fire department
16 getting there?

17 A. Yeah. I walked in to see what
18 was going on quickly, from what I could
19 see, and I saw that the place -- as the
20 pictures show -- what was there and all
21 Chris said was "The tank exploded."
22 That's all he said to me.

23 Q. So that's when you went --

24 A. And they were both conscious and
25 talking to me and I know exactly where

Page 134

1 they were laying down on the floor and
2 everything else alongside of it --

3 Q. And how big is that room?

4 A. 18 x 16. I remember when I
5 bought the boards, when I constructed it.

6 Q. And on that morning, was the
7 Poseidon system generally like in the
8 corner?

9 A. Yes.

10 Q. Could you describe for me when
11 you looked into the room -- and I
12 understand there was a lot of white --

13 A. Uh-hum.

14 Q. -- smoke or powder?

15 A. Powder.

16 Q. -- or whatever, but would you --
17 could you describe where they were in the
18 room.

19 A. If you'd walk out of the door
20 from the shop, there was a landing,
21 landing was four foot by the length of the
22 building, Frank was on the other side of
23 the landing on the concrete floor, and
24 Chris was maybe eight feet from him, and
25 the compressor was across from him.

Page 135

1 Q. I think what I'm going to do,
2 and I understand this is not to scale, if
3 you could like draw a rectangle that shows
4 the room, show where -- put P for where
5 the Poseidon system is, put C for where
6 Chris is, and put --

7 A. No problem.

8 Q. -- F for where Frank was, and
9 show the door going in the room.

10 A. You got a magic marker? That
11 will work better.

12 Q. See if that does any better.

13 A. This is the landing
14 (indicating). Over here was the -- here
15 was -- the Poseidon air compressor was
16 here (indicating). Here (indicating) is
17 the landing. This is the door
18 (indicating), this is the existing shop
19 (indicating), this here is all racks
20 (indicating). Okay? This is where Frank
21 ended up (indicating). And over here --
22 here is the Poseidon (indicating), and
23 Chris was someplace over here
24 (indicating). Okay.

25 Let me -- this is --

1 THE VIDEOGRAPHER: You want a
2 shot of that?

3 THE WITNESS: (Displaying photo
4 for videographer). I never was a good
5 architect.

6 Q. So point to where the Poseidon
7 system is.

8 A. Okay. Here is the room
9 (indicating). It's 18 x 18, 16 x 16.
10 This is the entrance (indicating) that
11 goes out to the parking lot, which is what
12 the EMS crew used. There's a landing that
13 goes across and this (indicating) is
14 coming out of a shop. My office is over
15 here (indicating). This is grade
16 (indicating). You would step down six
17 inches to the concrete floor. This is
18 where Frank was (indicating), these were
19 the racks of all the fire extinguishers
20 (indicating), the back corner was the
21 compressor and the tanks secured to the
22 wall, and Chris was over here
23 (indicating). He was filling that in
24 front and the force of the explosion
25 pushed him that way (indicating). And

1 this was all open in the middle.

2 Q. So if, in your experience, when
3 you were filling tanks with air from the
4 Poseidon system, how far from the Poseidon
5 system would you be?

6 A. Well, in front of that Poseidon
7 compressor are two chambers that you're
8 supposed to put the tank in. So you would
9 fill it right in front of it because all
10 your gauges and stuff are on the
11 compressor.

12 So, why he didn't use those
13 gauges is beyond me. He filled it on the
14 ground. That's why everything was below.

15 If you look at the severity,
16 everything went across there from the
17 knees down. If it was higher up, it would
18 have been a higher projection. The tank
19 was on the ground being filled, so when it
20 exploded, it went like this (indicating).
21 And he happened to be in the line of fire,
22 and so did Frank.

23 Q. So how is it different if they
24 used the compressor to fill it and they're
25 using the gauges? What are the -- the

1 gages --

2 A. They're different.

3 The -- the -- and -- and I'm saying this
4 from Day 1: Let's throw the compressor
5 out of the whole concept. The compressor
6 was never hooked up, never used. When I
7 left Florida, New York, knowing I was
8 moving to a new building, I filled all
9 four of those tanks with 4500 pounds of
10 air, because I can use the air compre-- I
11 can use the cascade system at any time
12 without the compressor until I need air.
13 All the compressor does is it compresses
14 air and fills the tanks. I can -- I could
15 have filled 20 of those tanks,
16 whatever you -- you would never, ever,
17 ever using the compressor, and that's when
18 I explained to OSHA, "Don't even bring
19 Poseidon into this picture, because the
20 compressor never ran." The compressor the
21 last time ran was July of '15 at my old
22 location when I topped off all four of
23 those tanks to relocate.

24 Q. Did you -- when you purchased
25 the compressor from Poseidon, did you also

1 purchase the tanks and the regulator?

2 A. Came as package deal. And I've
3 been saying that from Day 1 and I said
4 right to the OSHA guy. I said, "Come
5 here; let me show you. Here's the
6 compressor. Do you see a wire going from
7 the five horsepower motor to an on/off
8 switch on the floor like you're supposed
9 to have, back to my panel?" He says,
10 "No." I said, "Poseidon is not even
11 involved in this, because it was never
12 used."

13 Q. When you walked into the room
14 after the incident, was the compressor
15 running?

16 A. No re-- again --

17 Q. That's -- I'm just clarifying --

18 A. No.

19 Q. -- that for the record.

20 A. Never, ever, electrically hooked
21 up.

22 Q. That --

23 A. Still to this day, not hooked
24 up.

25 Q. That's -- that's what I'm

1 clarifying for the record.

2 A. Never hooked up. Like I said, I
3 could have filled 20 of those 175 pound
4 tanks until they ran out of air and then
5 I'd either have to go someplace else and
6 get air or fire up -- or -- or wire the
7 compressor.

8 Q. As far as using the tanks in the
9 cascade system, am I correct that you can
10 hook up to any one of four tanks to fill a
11 cylinder?

12 A. Yes. Again, it works off the
13 word "cascade": One, two, three, four.
14 It's called a bank of tanks. You can put
15 two tanks, four tanks. I've seen five,
16 six, seven, eight, nine, ten. You start
17 with your first tank, fill it up, you open
18 up the valve. Okay? As that tank lowers
19 down, where if you get down to 100 pounds
20 and you have to cascade to 200 pounds,
21 what's going to happen? It's not going to
22 get any air flow. So tank -- go to your
23 next tank, run out of air, you go to your
24 third tank, and then go to your fourth
25 tank. Just keep on going. That's how the

1 word "cascade" comes in.

2 Q. So each -- that's how you keep
3 the cascade --

4 A. Correct.

5 Q. -- going?

6 So each time you go to a new
7 tank, are you rehooking up the connection?
8 Is that how it works?

9 A. No. The connection that you're
10 filling to always stays the same. You're
11 only just changing your lines as you
12 progress down the --

13 Q. So the regulator never moves if
14 you --

15 A. Absolutely --

16 Q. -- if you're using a regulator?

17 A. Regulator is set once, it stays.

18 THE VIDEOGRAPHER: We have ten
19 minutes.

20 Q. Since you didn't go into --
21 since you didn't see the cascade system in
22 any detail that morning as they were
23 setting it up to fill the tank, I take it
24 that you don't know how the regulator was
25 set at the time of the accident; is

1 that --

2 A. No --

3 Q. -- correct?

4 A. -- that's correct.

5 Q. Can't say one way or another?

6 A. Can't say.

7 I will say that -- I said this
8 before -- that Chris, one week ago, filled
9 three tanks the same procedure, same way,
10 so I'm going to presume that those gauges
11 were set at the last position, which was
12 175. You wouldn't have to -- nothing else
13 was filled between one Friday to next
14 Friday. We never used -- never used --
15 had to use the cascade system.

16 Q. When you trained Chris on
17 filling cylinders, what did you train him
18 to do as far as the regulator from the
19 cascade system?

20 A. Always make sure that your
21 regulator is set to the proper
22 procedure -- to the proper fill pressure
23 of the tank you're filling, because you
24 could fill a tank at 175, you can fill it
25 a SC-- a self-contained -- a breathing air

Page 143

1 pack to 2000 pounds, 4500 pounds, you have
2 to set the regulator based on the tank
3 that you're filling.

4 Q. And did you give him any
5 direction as far as where to look on a
6 test tank to know what pressure you are
7 filling to?

8 A. Yes, because, like I said, he
9 was very knowledgeable, and I said, if
10 filling this tank of air is this -- is
11 this is -- is -- is the same as if you're
12 filling a tank for a fire -- a fire
13 extinguisher; you've got a gauge on it.
14 In order to fill anything, whether it's a
15 compressed air cylinder or fire-- they
16 have to have gauge in it, always check
17 your gauge.

18 Q. The gauge is going to show you
19 the number?

20 A. That's you're working pressure,
21 yes.

22 Q. And if, for example, on this
23 tank, the gauge in the green area says
24 175, what was your training to Chris
25 concerning where to set that part of the

Page 144

1 regulator, the part going into the tank?

2 What --

3 A. No more than 25 pounds greater
4 than your test -- your service pressure,
5 which would be no greater than the working
6 pressure, which would be 175 and 25 is
7 220. Oh, no, 205. What's 1 -- 1 -- 200.
8 200 pounds.

9 THE VIDEOGRAPHER: Running out
10 of time. About four minutes left.

11 Q. Is it your testimony, sitting
12 here today that what -- let me ask you:
13 Was Chris supposed to be in that room that
14 morning?

15 A. Yes. Only Chris.

16 Q. Was Frank supposed to be in that
17 room that morning?

18 A. No.

19 Q. Whatever happened to the
20 extinguishers that you testified to that
21 you gave Frank to work on?

22 A. What happened to them?

23 Q. Yeah.

24 A. Oh, God. With my rec-- as far
25 as my recollection, I think either I did

Page 145

1 it or William, who came in -- somebody --
2 you know, everything -- that day -- they
3 could have been done that day or they
4 might have done that following Monday,
5 once everything settled, but they did go
6 back out to the customer.

7 MS. STIGALL: One more question
8 and then we're going to try and get
9 this stopped.

10 (Referring to drilling and
11 hammering on roof.)

12 Q. I guess my question was, that
13 morning, you assigned Frank Buono to do
14 these fire extinguishers?

15 A. Uh-hum.

16 Q. Did he go back and do that?

17 A. No, because he -- I don't -- he
18 never did 'em in the first place, because
19 they were still, after the accident, all
20 this was going on, the three brand new
21 fire extinguishers were still sitting on
22 the work bench where I left them for him
23 to do and the three from Nelson Tree were
24 still sitting next to him. So he never
25 did them.

Page 146

1 MS. STIGALL: Let's go head
2 and...

3 THE VIDEOGRAPHER: The time is
4 12:51. We're going off the record.
5 This is the end of Media File No. 1.

6 (Recess.)
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Page 147

1 A F T E R N O O N S E S S I O N

2 1 : 4 9 p . m .

3

4 THE VIDEOGRAPHER: Good
5 afternoon. We're back on the record.
6 The time is 1:49. This is the
7 beginning of Media File No. 3.

8

9 B R I A N S C O T T ,
10 having been previously duly sworn,
11 testified further as follows:

12 CONTINUED EXAMINATION

13 BY MS. STIGALL:

14 Q. Mr. Scott, we've moved, we're
15 now away from the pounding that was on the
16 roof?

17 THE VIDEOGRAPHER: Can you put
18 your mike on?

19 Q. We're now away from the pounding
20 that was on the roof and now I have my
21 mike on, so we'll go ahead and proceed.

22 I'm going to hand you a few
23 documents that we marked as additional
24 exhibits during the break, and just for
25 identification, so we get those in the

Page 148

1 record --

2 A. Okay.

3 Q. -- the first document I have is
4 listed as Defendant's Exhibit 19 and I
5 understand those to be kind of time cards
6 for Chris Foust and Frank Buono for
7 February.

8 (Defendant's Exhibit 19, time
9 cards for Chris Foust and Frank Buono
10 for February 2016, marked for
11 identification, this date.)

12 Q. Can you identify them as that?

13 A. Yes. First one is for Chris
14 Foust for February of '16 and the second
15 one is for Frank Buono for the same month
16 of '16.

17 Q. Thank you.

18 (Defendant's Exhibit 20,
19 Worker's Compensation claim notes for
20 Chris Foust and Frank Buono, marked
21 for identification, this date.)

22 Q. Next, as Defendant's Exhibit 20,
23 I have some notes taken regarding, I think
24 it's the Worker's Compensation claim.
25 Could you identify to me Defendant's

Page 149

1 Exhibit 20, whose handwriting those notes
2 are in, if you know?

3 A. It's not mine. I don't know
4 whose handwriting it is, but it has the
5 claim number Chris Foust with his address,
6 and also has a claim number for Frank
7 Buono, with -- I assume these last numbers
8 are -- the numbers are the Social Security
9 numbers.

10 Q. And I'll just represent to you
11 that was a document I received from your
12 wife, Patty. Does it look to you to be
13 something that maybe would have been in
14 your file?

15 A. Yes.

16 Q. Your business records?

17 A. Absolutely.

18 (Defendant's Exhibit 21, copy of
19 a spiral notebook containing notes
20 kept by Patty Scott relating to
21 contact with parties involved with the
22 accident, marked for identification,
23 this date.)

24 Q. Now, as to Defendant's
25 Exhibit 21, can you tell me what that is.

1 A. This is a spiral notebook -- a
2 copy of a spiral notebook -- of notes that
3 my wife Patty started the day of the
4 accident with everybody who -- all parties
5 that were involved, including Hartford,
6 Department of Labor, DKY, who were the
7 cleanup company, the insurance company,
8 lawyers. This is all -- everything --
9 this is a regular -- a ledger book that we
10 kept from the date of the accident in
11 contact with any parties involved
12 regarding the incident.

13 Q. And that is Defendant's
14 Exhibit 21?

15 A. Yes.

20 Q. And finally, I've got
21 Defendant's Exhibit 22, which is an
22 exhibit I received from your wife, as I
23 understand. As I understand, it was
24 something that she found when she was
25 looking for keys to move a car after the

Page 151

1 accident?

2 A. Correct. I can re-- in the shop
3 of the building, not -- excluding from the
4 room of where the accident happened, Chris
5 had his desk and that's where he used to
6 keep his stuff, and, after the accident,
7 we had to move his car and, in turn, we
8 found these prescriptions of fentanyl,
9 and, yes, that belonged to Chris.

10 Q. So that we're clear, Defendant's
11 Exhibit 22, was that found on the day of
12 the accident?

13 A. If not the day of the accident,
14 within 24 hours of the accident, yes.

15 Q. When you were going to move the
16 car?

17 A. Correct.

18 Q. And I see that this is a
19 prescription for Fentanyl Transdermal
20 System, 100 milligrams an hour, expiration
21 date August 2017.

22 Is that what you understand
23 it --

24 A. Yes --

25 Q. -- to be?

Page 152

1 A. -- it is. Yes.

2 (Defendant's Exhibit 23, diagram
3 drawn by witness at today's deposition
4 showing layout of room where incident
5 occurred, marked for identification,
6 this date.)

7 Q. And finally, we have Defendant's
8 Exhibit 23, that was utilized by you
9 earlier in this deposition. If you can
10 just describe, generally, what you were
11 doing when you drew that.

12 A. Basically, I showed the parties
13 here of a layout of the room of where the
14 incident happened on that date in
15 February, showing the position of the
16 equipment, the doorways, and exactly when
17 I entered the room after the incident
18 happened of where both Mr. Foust and
19 Mr. Buono were on the ground.

20 Q. Thank you.

21 MS. STIGALL: I'm going to go
22 pass you as a witness at this time and
23 allow -- I think plaintiff's attorney
24 is going to ask you, Mr. Fromson is
25 going to ask you, some questions.

1 THE VIDEOGRAPHER: Can you clip
2 on?

3 MR. FROMSON: Absolutely.

4 EXAMINATION BY MR. FROMSON:

5 Q. Good afternoon, Mr. Scott.

6 A. Okay.

7 Q. My name is Ken Fromson. Excuse
8 my hoarse voice. I will be brief this
9 afternoon. I have a couple of follow-up
10 questions. I'll try not to be
11 duplicative. Okay?

12 A. Okay.

13 Q. Just keep all your answers
14 verbal as opposed to providing a shrug of
15 the shoulders or a nod of the head.

16 A. Okay.

17 Q. If there's a question you don't
18 understand, let me know; I'll rephrase it
19 for you. Fair enough?

20 A. Fair enough.

21 Q. Okay. Earlier in your
22 testimony, you had described that the air
23 compressor was literally not hooked up to
24 an electrical outlet. Do you recall
25 generally --

Page 154

1 A. Yes.

2 Q. -- explaining that?

3 You had indicated -- and I'm
4 paraphrasing you -- that the cascade
5 system bottles of air may have been
6 electrified?

7 A. No.

8 Q. So is it fair to say that
9 neither the compressor or the cascade
10 system was plugged in to anything?

11 A. Correct.

12 Q. No electricity whatsoever to
13 either of those devices; correct?

14 A. Absolutely, yes.

15 Q. Thank you.

16 Earlier in your testimony, when
17 you were describing the facts, the events
18 that you experienced on that day, at some
19 point you indicated that you went into
20 your office and that then all hell broke
21 loose. Do you recall generally making
22 that statement?

23 A. Yes.

24 Q. What do you mean when you
25 reference "all hell broke loose" after you

Page 155

1 went into your office and the event had
2 already happened?

3 A. Like I said, I was on the phone,
4 I was on the phone with a vendor, a
5 supplier, and I heard -- heard an
6 explosion, I hung up the phone and I went
7 out into the shop and saw nobody in the
8 main shop, and I went in through the next
9 door and all I saw was powder and that's
10 when I heard all the screaming and the
11 hollering of "Hey, explosion, I lost my
12 leg, my leg, my legs," and that's when
13 everything started.

14 Q. And so I may have misunderstood
15 your answer earlier in the day. I took
16 your answer to mean you had called, that
17 there was a call to 911, that you left the
18 treatment to be done by EMS and fire
19 department, and that you then went into
20 your office and then all hell broke loose.

21 A. No.

22 Q. So it's --

23 A. No.

24 Q. When you referenced that hell
25 had broken loose, did --

1 A. Hell had broke loose --

2 Q. -- the events?

3 A. From the time I heard that
4 explosion till I walked out, saw the
5 phone, the phone was off the hook in the
6 shop, nobody in the shop, then I looked
7 into the other room, all I saw was powder
8 and dust, and that's where everybody was,
9 that's when everything -- thing -- that's
10 when everybody hell broke -- I was not the
11 first one to call 911, by the way.

12 Q. And thank you for the
13 clarification.

14 A. Okay.

15 Q. Have you seen the OSHA report
16 related to the government's investigation
17 of what transpired?

18 A. The official, well, I don't
19 recall seeing it. We did get it. Did we
20 get it?

21 Q. Have you --

22 A. Yes.

23 Q. Have you seen the -- the
24 citations and notifications --

25 A. Yes.

1 Q. -- and --

2 A. Yes.

3 Q. -- penalties --

4 A. Yes.

5 Q. Hold on a second. Just let me
6 finish before you answer, for the benefit
7 of the court reporter. You're
8 anticipating my questions, and I
9 appreciate that. Consider it to be more
10 of a question-and-answer session --

11 A. Okay.

12 Q. -- again, for his benefit,
13 because he can't type us both down at the
14 same time. Are you with me? Yes?

15 A. Yes.

16 Q. Fantastic.

17 So did you receive the citation
18 and notifications of penalties summarizing
19 the issues in the investigation result?

20 A. Yes, I did.

21 Q. Was it your understanding that
22 on the day of the event Chris Foust was
23 attempting to fill this subject tank with
24 compressed air?

25 A. Yes.

Page 158

1 Q. And was it your understanding
2 that there was an air line, or a hose,
3 that was connected to the Poseidon cascade
4 system that then led to the subject tank
5 and valve assembly?

6 A. Yes.

7 Q. And was it your understanding
8 that Oprandy's Fire used the cylinder and
9 valve assembly product as a portable
10 compressed air source for testing fire
11 suppression systems at field sites?

12 A. Yes.

13 Q. In your industry, what does it
14 mean when you use the term "to test fire
15 suppression systems"?

16 A. So, juris-- under the standards,
17 authorities have a -- jurisdictions, or
18 fire inspectors or building inspectors,
19 require that when a commercial restaurant
20 system is installed, you have to perform
21 what they call a balloon test, and the
22 balloon test works as the following: The
23 whole entire fire suppression system is
24 installed. You have to remove the tank of
25 liquid agent, which is the final component

1 of the test, remove that cylinder, and you
2 are to replace that tank with a tank of
3 air. Okay?

4 You set whole system up, you
5 take the nozzles off the -- the nozzle
6 come off the drops, you put balloons on
7 them. It has to be witnessed by a fire
8 inspector, and you do what they call a
9 balloon test. The tank that you fill with
10 air -- you go through the whole cycle.
11 You pull the pull stations, shuts off the
12 gas valves, trips any fire alarms, fills
13 the balloons with air, fire inspector
14 witnesses it you take pictures, you sign
15 off, you're done. Now you know that the
16 system will work.

17 What you do is, you're doing an
18 air test to make sure it works instead of
19 the real test of liquid, which can be
20 expensive and very costly, or, excuse me,
21 messy. So it's a balloon test and it's in
22 the -- and it's in the(indicating)
23 "standards" of that we go by to perform a
24 balloon test at the discretion of the
25 authority having jurisdiction.

1 Q. You had described earlier in
2 your testimony that Chris Foust,
3 approximately a week earlier, had filled
4 other tanks in the same general way that
5 he was performing his work on this day of
6 the event. Do you recall generally --

7 A. Yes.

8 Q. -- testifying to that?

9 Those other tanks from
10 approximately a week earlier, were those
11 also Worthington tanks with the similar
12 fire -- or Kitchen Knight valve assembly?

13 A. Exactly the same. The system
14 happened to be at a restaurant and the
15 reason there were three, because there was
16 a renovation on a restaurant, one system
17 had two tanks, one system had one tank.
18 So, instead of running back and forth to
19 fill tanks, I had three tanks. You had to
20 put two tanks on one test, one tank on the
21 other, two tests. Exact same cylinder,
22 same size, same -- same everything. Same.

23 Q. As you sit here today, do you
24 have an independent recollection of
25 assigning Chris Foust that job

1 approximately a week earlier related to
2 the other tanks?

3 A. I do have a recollection of it.
4 I -- that was a Friday morning, and I
5 specifically said to Chris, I says, "I
6 have a -- I have a test in the morning, I
7 need three tanks filled, I have to be
8 at..." such and such a job down the
9 street, in whatever time we figured, "...
10 to do a balloon test," and he said -- I
11 said, "Can you fill the tanks?" And he
12 said, "Yes."

13 Q. In terms of the protocol,
14 standard operating procedure back then
15 related to these other tanks,
16 approximately a week earlier --

17 A. Uh-hum.

18 Q. -- from where would these tanks
19 be retrieved within Oprandy's Fire?

20 A. When you say "retrieved" --

21 Q. Where do you get them from?

22 A. Well, the tank that was involved
23 in the incident --

24 Q. I'm not asking you about that
25 yet. The tanks that are used a week

1 earlier.

2 A. They were old, they were -- they
3 were Pyro-Chem tanks that were no longer
4 eligible to be used for final end product
5 because of the fact of the tank was either
6 too small, it was undersized, the
7 labelling was off of it, but it could
8 still be used as an air tank for testing,
9 because of the situation where you can get
10 multiple tanks when you need two tanks at
11 the same time.

12 Q. Were these tanks -- and I may
13 have asked you earlier, so I need some
14 clarification. These tanks that were used
15 for that restaurant approximately a week
16 earlier, were they the same cylinder size,
17 p.s.i. and valve assembly on those that
18 was being used on the day of our event in
19 February of 2016?

20 A. Same pressure, same
21 manufacturer, same style. As far as the
22 size, it could have been up or down a
23 size, but, when it comes to air, air is
24 air and tank is tank, but they were
25 identical carbon copies.

1 Q. And how would it be that
2 Oprandy's Fire would store those tanks
3 before assigning them to Chris? Would
4 they be situated somewhere that they were
5 full, or would they be situated somewhere
6 where they were empty or half full or half
7 empty, such that Chris would then take
8 them and fill them?

9 A. Usually, if -- at the morning of
10 the incident, that tank was empty.

11 Q. I'm asking about the one a week
12 earlier or the several a week earlier.

13 A. They're empty until I need them.

14 Q. So that's -- thank you for that
15 clarification.

16 When you say they're empty until
17 you need them, how was it, in your usual
18 course of business, that Oprandy's Fire
19 would know they were empty?

20 A. I would be the only one doing
21 the testing, and it would be discharged on
22 the job for the test, I'd come back and
23 I'll put them on the shelf and leave them
24 until I need them for the next time, which
25 could be whenever.

1 Q. So, presumably, the tanks that
2 he had used for the restaurant
3 approximately a week earlier came from
4 some area of Oprandy's Fire and presumably
5 they were empty because they had been used
6 at some point even earlier until they were
7 emptied. Is that fair?

8 A. Yes.

9 Q. And it would be your
10 understanding that each of those tanks
11 would have had a gauge, a pressure gauge
12 on, or attached to the valve assembly, on
13 those respective tanks; right?

14 A. Yes.

15 Q. And it would be your
16 understanding that those would be reading
17 as empty?

18 A. Yes.

19 Q. Now, those -- you're very
20 familiar with those pressure gauges;
21 right?

22 A. Yes.

23 Q. Is it fair to say those pressure
24 gauges, back then, they didn't have an
25 "Empty" word? The word "empty", I'm using

Page 165

1 that word, but the gauges didn't say
2 "Empty"; correct?

3 A. Correct.

4 Q. How would they have indicated to
5 a user, or someone like yourself, that
6 they were not full?

7 A. If it was full, it would be at
8 12:00; if it was empty, it will be below
9 12:00, whether it could be at 9:00, 8:00,
10 7:00, but someplace, if it was below
11 12:00, you know right away it had no
12 pressure in it and I would know because of
13 the fact because I'm the one who
14 discharged it.

15 Q. Now, let me ask you about the
16 tank in question, the product in question,
17 that was the subject of this event where
18 these individuals were hurt. Okay?

19 A. Okay.

20 Q. How did you know, or what basis
21 do you have to tell us, that that subject
22 tank was empty at the time that Chris
23 Foust attempted to fill it?

24 A. Because exactly one week ago
25 that tank, along with the two other tanks,

1 were used, total of three tanks, were used
2 in a balloon test, and they were empty,
3 and I left them on the shelf, and I didn't
4 know about this -- that February 12th,
5 that test, I didn't know that that test
6 was going to happen until the day before.
7 So I would leave the tank empty and then
8 do what I need for Friday morning at
9 11:00, fill it.

10 Q. Do you have any documentation,
11 anything whatsoever, that would
12 corroborate what you're telling us, that
13 these tanks -- in particular, this subject
14 tank -- was utilized and was in fact
15 empty?

16 A. The only thing I would have
17 would be the day I did the --

18 Q. The balloon test?

19 A. -- the day I did the balloon
20 test.

21 Q. Okay. So if you needed to, if
22 you wanted to prove that you had actually
23 done a balloon test at a restaurant, you
24 could potentially look back to your
25 records?

Page 167

1 A. I know exactly what the name of
2 the account was, the day I did, and who
3 the inspector was.

4 Q. Do you recall now?

A. I exactly know.

6 Q. Tell us who.

7 A. It was the Town of Walkill,
8 Middletown, New York. It was at Cosmo's
9 Pizzeria, Route 211 East, and the
10 inspector was a gentleman by the name of
11 Nick Elia. He was my witness to the air
12 test. We have did a double -- double
13 system. It was a renovation. It was a
14 restaurant under renovation and due to
15 final CO, that morning we had to do a
16 balloon test.

19 THE WITNESS: E-l-i-a. Dominick
20 Elia.

21 MS. STIGALL: Did you say a
22 final C...

23 THE WITNESS: CO, certificate of
24 occupancy.

25 O. What was Dominick Elia's

1 relationship to the situation?

2 A. He was the Town of Walkill
3 building inspector/code enforcement
4 officer, mostly building inspector.

5 Q. Now, let me change -- change
6 subjects --

7 A. Go ahead.

8 Q. -- for a moment.

9 The maximum pressure available
10 from the Poseidon cascade system, was that
11 approximately 4,000 p.s.i.?

12 A. 4500. That's the most the tanks
13 can -- that's the most the tanks can take,
14 because when you them off the compressor,
15 the compressor automatically shuts off at
16 4500. So you can't max out.

17 Q. And you are referencing the
18 Poseidon cascade system that was at
19 Oprandy's fire on the day of the event?
20 Yes?

21 A. Yes.

22 Q. Yes?

23 A. Yes.

24 Q. I want to make sure.

25 A. Yes, yes, yes, yes.

1 Q. In terms of the actions that
2 were taken by Messrs. Foust and Buono, was
3 it your understanding that they were --
4 they would listen for the sound of air
5 flowing into the cylinder and watch the
6 pressure gauge on the valve assembly on
7 the top of the cylinder until it indicated
8 the cylinder was full?

9 A. No.

10 Q. Is it true that Chris Foust was
11 not certified to service fire
12 extinguishers?

13 A. Now, reiterate that, as far as
14 "service".

15 Q. Let me see --

16 A. There's a -- there's a -- some
17 clarification.

18 Q. I would represent to you that
19 the OSHA report in this case indicated
20 certain facts based upon what the OSHA
21 individuals had investigated; in part,
22 that employees Foust and Buono performed
23 hydrostatic testing of low-pressure DOT
24 cylinders and fire extinguishers. Is
25 that -- do you agree with that?

1 A. No.

2 Q. Do you know how an individual
3 from OSHA would have received that
4 information?

5 A. It didn't come from me, because
6 I am not -- I -- I can hydrotest
7 low-pressure cylinders, not DOT cylinders,
8 and OSHA knew that.

9 Q. I would want you to assume the
10 OSHA report states that neither Mr. Foust
11 or Mr. Buono were certified to service
12 fire extinguishers, perform hydrostatic
13 tests, in the context of the way the OSHA
14 report used the term "certify". Do you
15 have an understanding, given your industry
16 knowledge, as to what they're talking
17 about?

18 A. Correct, but the word "service"
19 is very vague. "Service", I have four
20 technicians, including myself. We service
21 on the road. When they come in the shop,
22 they don't service 'em. They do
23 maintenance on 'em or recharging or
24 low-pressure testing. So the word
25 "service", it has some clarification on

1 it.

2 Q. So in the industry, the term
3 "service" is the --

4 A. We service.

5 Q. In the industry, the term
6 "service" is distinctly different than
7 "recharging"; correct?

8 A. Absolutely, yes.

9 Q. Thank you for the clarification.
10 Now, I'd ask you to consider the cascade
11 system with the compressor, as you
12 understood it was configured back on the
13 day of the event. Can you picture it in
14 your mind?

15 A. Absolutely.

16 Q. And have you seen the
17 photographs from the OSHA report that
18 depict the red cascade -- the red
19 compressor with the cascade system behind
20 it?

21 A. Yes.

22 Q. And are those fair and accurate
23 as to that being the compressor and the
24 cascade system that Oprandy's had acquired
25 from the fire district many years ago?

Page 172

1 A. Yes.

2 Q. So now, just focus on the
3 compressor and the cascade system for me.

4 Was there any language on that,
5 whether it be a fixed by a label or a
6 sticker or a card or a tag, that
7 instructed users as to the pressurization
8 of cylinders that would be getting filled
9 with air?

10 A. No.

11 Q. Same question. I'm going to go
12 down a list of a bunch of item. Alright?

13 A. Okay.

14 Q. Same question: Any such
15 language as to overpressurization?

16 A. No.

17 Q. Was there any such language to
18 review the manufacturing service manuals?

19 A. No.

20 Q. Was there any such language to
21 use certain tools?

22 A. No.

23 Q. Was there any such language to
24 use certain recharge materials?

25 A. No.

Page 173

1 Q. Was there any such language to
2 use certain lubricants?

3 A. No.

4 Q. Was there any such language to
5 charge only to a certain pressure?

6 A. Language as far as what?

7 Q. Such as a warning or instruction
8 not to overpressurize, but only to go to a
9 certain p.s.i.?

10 A. No.

11 Q. Was there any language to
12 utilize or use a pressure relief device?

13 A. No.

14 Q. Was there any language to
15 confirm that the agent --

16 A. Back to --

17 Q. Yes.

18 A. On that pressure relief valve,
19 resay that again.

20 Q. Absolutely. And we're only
21 talking about the cascades system and the
22 compressor. Was there any such language
23 to utilize a pressure relief device while
24 filling an agent tank?

25 A. There -- yes, there -- the --

Page 174

1 verbally, on all high-pressure cylinders,
2 there's a relief valve built right into
3 the cylinder. A self-contained breathing
4 apparatus is high pressure. By the
5 manufacturer, and by everything else, you
6 have to have a blowoff disc, so that
7 you're only supposed to put in 500 pounds,
8 you put in 700 pounds, everybody has that
9 fallacy that the tank will devalve. No.
10 It actually blows a safety. That's --
11 that's common sense.

12 Q. You referenced "verbally", so I
13 want to make sure my question is clear.
14 Was there any language on the compressor
15 or the cascade system -- whether affixed
16 by label, sticker, card, or tag -- that
17 instructed users to utilize a pressure
18 relief device while filling an agent tank?

19 A. No.

20 Q. Any such language to confirm the
21 agent tank's own pressure gauge on the
22 valve assembly was functional?

23 A. No.

24 Q. Now I'm going to ask you the
25 very same questions, but solely as it

Page 175

1 pertains to the tank and valve assembly.

2 A. Alright.

3 Q. So, as a foundation, can you
4 picture in your mind the actual tank and
5 valve assembly in this case?

6 A. Yes.

7 Q. Was there any language on either
8 the cylinder or the valve assembly, or
9 affixed to it by label, sticker, card or
10 tag, that instructed users as to the
11 pressurization of the cylinder?

12 A. No.

13 Q. Language not to overpressurize
14 the cylinder?

15 A. No.

16 Q. Was there language to review the
17 manufacturer's servicing manuals?

18 A. No.

19 Q. Was there any language to use
20 certain tools?

21 A. No.

22 Q. Was there any language to use
23 certain recharge materials?

24 A. No.

25 Q. Was there language to use

1 certain lubricants?

2 A. No.

3 Q. Was there language to only
4 charge to a certain pressure?

5 A. No.

6 Q. Was there any language to use a
7 certain pressurizing adaptor?

8 A. Language written? No.

9 Q. Was there any language to use a
10 pressure relief device?

11 A. No.

12 Q. Now, you had talked earlier
13 about how to know when a tank is full and
14 you used the expression "at 12:00, you're
15 full." Do you remember generally --

16 A. Sure.

17 Q. -- explaining that to us?

18 A. Yes.

19 Q. So, do you have an understanding
20 as to what can render a tank's pressure
21 gauge to not function properly?

22 A. No.

23 Q. Have you ever experienced in
24 your line of work a pressure gauge on a
25 fire suppression system -- such as a tank

Page 177

1 with a valve assembly we're discussing
2 here -- where you observed the pressure
3 gauge to not function properly?

4 A. Yes.

5 Q. Can you give us an example.

6 A. I just recently did some the
7 other day. I sent them out for hydro,
8 came back and filled 'em, go through all
9 the procedure, like I've always done, put
10 pressure to it of 200 pounds, 225, and
11 tank -- nitrogen going in and no gauge
12 reading, no gauge reading, devalve --
13 depressurize it in replace the valve.

14 Q. And do you have experience,
15 given your working knowledge of this
16 industry, as to the various reasons why a
17 pressure gauge would not function
18 properly?

19 A. Multitude of things. It could
20 have been -- well, first of all, you
21 always check the gauge itself to make sure
22 that it's intact, you know, the gauge --
23 the -- all that gauge is is a needle, and
24 if the needle is broken, bent, the glass
25 is blown, that's your first sign that the

Page 178

1 gauge is no good. The other part is that
2 all it is is a small little orifice that
3 is probably big as a paper clip. That air
4 has to go through it and could be an
5 obstruction, and so you basically start
6 all over again.

7 Q. Now, when you reference an
8 obstruction, what type of obstruction are
9 you talking about?

10 A. It could be an obstruction of...
11 anything. Chances -- not dirt, but just
12 an obstruction of when it was originally
13 made or when it was -- it could have been
14 something maybe in the liquid. I --
15 that's it. But to the -- the chances of a
16 gauge going bad, on my experience --

17 Q. Low?

18 A. -- 1 out of 500. So...

19 Q. So isn't it -- how would it be
20 that, in your experience, that tank would
21 with a valve assembly such as this one,
22 which only had air, it didn't have
23 chemical --

24 A. Right.

25 Q. -- why would there be an

1 obstruction in the gauge?

2 A. There wasn't. Who said there
3 was an obst... (sic)?

4 Q. I'm not saying there was.

5 A. There was no obstruction in the
6 gauge.

7 Q. I'm not saying there was. I'm
8 asking is it possible for a tank such as
9 this one that's only filled with air to
10 get an obstruction?

11 A. Probably not.

12 Q. And why do you say that?

13 A. What else would be in it but
14 air? It had never saw liquid, never saw
15 powder, never saw anything but air only,
16 so there would be no obstruction.

17 Q. Now, as it pertains to those
18 tanks, the ones that were used for the
19 restaurant, and the one that was used for
20 this, the one that was used in this event,
21 do you know when was the last time those
22 gauges were inspected?

23 A. The last time they were filled.

24 Q. And how would it have been
25 inspected?

Page 180

1 A. When you go to fill it. There
2 is no way to inspect the gauge. If the
3 gauge -- if it's -- if it's flat line here
4 and it goes to 12:00, the gauge is
5 working. How -- there is no other way to
6 check a gauge.

7 Q. Have you ever heard the
8 expression "calibration of a gauge" as
9 part of maintenance or inspection?

10 A. Not required.

11 Q. I didn't -- I didn't ask you if
12 it was required --

13 A. It's not.

14 Q. -- sir? My question was have
15 you ever --

16 A. Yes, I have heard of it. Yes.

17 Q. Let me ask -- so you've heard
18 the expression, "to calibrate", as part of
19 maintenance or inspection? Yes?

20 A. Yes.

21 Q. Was there anything, any language
22 on the tank or valve assembly in this case
23 that would instruct users to maintain or
24 inspect the pressure gauge?

25 A. No.

1 Q. Are you familiar with the firm
2 in the industry related to fire
3 suppression systems and extinguishers, the
4 acronym SDS, for -- is it a safety data
5 set or --

6 A. Yes.

7 Q. What does it mean?

8 A. Safety data sheets.

9 Q. Now, did you have an
10 understanding that extinguishers,
11 including those from Pyro-Chem, provide
12 SDS, safety data sheets, for compliance
13 with OSHA?

14 A. Yes.

15 Q. In this case, as it pertained to
16 this particular tank and valve assembly,
17 was there an SDS that was within Oprandy's
18 possession back in February of 2016?

19 A. For what?

20 Q. For the tanked valve assembly in
21 this case, the one that was either -- the
22 Pyro-Chem.

23 A. Yes, but why would you need -- a
24 safety data sheet is only on the chemical
25 that's involved.

1 Q. I understand.

2 A. Why do you need a safety data
3 sheet on air?

4 Q. I'm not -- I don't have the
5 answer.

6 A. I don't have it either.

7 Q. I only have questions.

8 A. I have safety data sheets for
9 every single chemical that is in my
10 possession at 49 Brookline Avenue.

11 Q. Understood. And back in
12 February, you did --

13 A. I had it then. I've had it for
14 probably ten years since it's been
15 required.

16 Q. Thank you.

17 Did you have an understanding as
18 to whether Mr. Foust had a Pyro-Chem
19 certificate?

20 A. Continue.

21 Q. I'm sorry?

22 A. Oh. Ask again.

23 Q. Sure.

24 Did you have an understanding as
25 to whether Mr. Foust had a Pyro-Chem

1 certificate?

2 A. Not required. No.

3 Q. And did you have an
4 understanding as to whether Mr. Buono had
5 a Pyro-Chem certificate?

6 A. No. Not required.

7 Q. So the answer is neither one of
8 them --

9 A. No.

10 Q. Hold on. You just got to let me
11 finish. It's for the benefit of the
12 reporter. So it was your understanding
13 that neither Mr. Foust or Mr. Buono had
14 Pyro-Chem certificates?

15 A. True.

16 Q. Thanks.

17 A. Could I ask you a question on
18 that?

19 Q. Yeah. I might not have the
20 answer, but if you want.

21 A. What does this -- what does this
22 Pyro-Chem have anything to do with --
23 we're going off the subject. You are.

24 Q. Okay.

25 A. You're going way off the

Page 184

1 subject. You go way off, you're going out
2 of the scope, and you're not focusing on
3 what we're here for.

4 Q. Alright. I appreciate your
5 candor.

6 A. Well, I've been in this 40 years
7 and I'm being asked questions that have
8 nothing to do with pertaining to filling a
9 simple tank of breathing air, bottom line.

10 Q. What was your understanding as
11 to the pressure gauge being on the gauge
12 175?

13 A. What was my --

14 Q. What was your understanding,
15 what was your basis for believing the
16 pressure gauge at full would indicate 175
17 p.s.i.?

18 A. Because that's the way it came
19 from the factory of Pyro-Chem.

20 Q. Had you ever -- okay.

21 MR. FROMSON: And so can I mark
22 this.

23 (Plaintiff's Exhibit 1,
24 photograph, marked for identification,
25 this date.)

1 Q. So do you have it in front of
2 you, the exhibit?

3 A. Correct.

4 Q. I'd ask you to presume that that
5 is a picture of the pressure gauge from
6 the valve assembly on the day of the
7 event. Will you do that for me, sir?

8 A. Negative. It's not.

9 Q. What makes you believe it's not?

10 A. Because this is a 225-pound
11 gauge and the tank on question was 175.
12 So this has -- this has nothing to do with
13 the accident.

14 Q. And so if that reflects the
15 pressure gauge that was provided to all
16 the parties here from OSHA at their
17 inspection site from Salt Lake City,
18 shipped in a box to New York, you would --

19 A. That's wrong.

20 Q. -- your indication is they've
21 got the wrong gauge?

22 A. They've got the wrong gauge, and
23 I can explain why.

24 Q. Go ahead.

25 A. Pyro-Chem designed their kitchen

1 suppression systems back in 2001, 2002.
2 They increased their tank sizes, increased
3 their liquid sizes to compensate for those
4 tanks, and they also -- they also
5 increased their tank pressures from 175 to
6 225. You cannot buy from Pyro-Chem today
7 a 175 pound p.s.i. tank of any liquid
8 agent. Not available. Are they still out
9 there? Yes. There are fire suppression
10 systems still today that I still service
11 and I still fill at 175 because they're
12 still (indicating) "legal" in the
13 industry.

14 That tank was a tank, they took
15 a sample of what I had in my inventory,
16 showing 225 pounds. That's not the --
17 that's not the cylinder. If you find --
18 if you can find a tank with the green
19 collar on it from Pyro-Chem, that's a
20 175-pound gauge on it. Because that came
21 off of a cylinder that was a 2.4 gallon
22 liquid, that could only take 175 pounds
23 pressure.

24 Q. The other tanks that you had
25 utilized at the restaurant, at Cosmo's,

Page 187

1 approximately earlier, do you still have
2 those in your possession?

3 A. Yes, I do.

4 Q. And I apologize if you told me,
5 those were of the same p.s.i.?

6 A. 175.

7 Q. I would simply ask you not to
8 throw them out; preserve them, please.

9 A. I still use them.

10 Q. Fantastic.

11 A. Thank you.

12 MR. FROMSON: Can we go off the
13 record for a moment.

14 THE VIDEOGRAPHER: Sure. The
15 time is 2:26. We're going off the
16 record.

17 (Brief recess.)

18 THE VIDEOGRAPHER: The time is
19 2:42. We're back on the record.

20 MR. FROMSON: I have no further
21 questions at this time. Thank you
22 very much for your candor today.

23 THE WITNESS: Thank you.

24 EXAMINATION BY MS. MOLINEAUX:

25 Q. Alright. Good afternoon. I'm

1 just going to jump in, probably jump
2 around more than they have, because I'm
3 trying to fill in some holes and -- I want
4 to ask you: If Chris said in his
5 statement that he was pushing down the
6 valve on the cylinder, do you have an
7 understanding of what he would be pushing
8 on?

9 A. Yes. If you took this -- let me
10 bring this up. If you took this main
11 valve off, this part here, off --

12 Q. First, I just want to represent
13 for the video that this is a tank that you
14 had in your car and you brought in, it was
15 one of the tanks that was filled the week
16 before our incident. So it's not an exact
17 match of the tank that we had in this
18 incident?

19 A. Very close.

20 Q. But it's close?

21 A. Close.

22 Q. Okay.

23 A. Okay.

24 Q. Okay. So with that
25 understanding...

1 A. This male connection threads
2 into the top of the valve. Okay? The
3 reason it's on here is because, mainly so
4 I don't lose it. If you took this off,
5 you could push down on the disc which
6 would open up the valve assembly, which
7 will allow air in it. You can push down
8 on it. You don't have to push down on it
9 when you're filling it with air, because
10 the air will flow either -- either way
11 you'll get air into that cylinder.

12 Q. Had you taught Chris to push
13 down on that valve?

14 A. I basically told him here's
15 how -- here's how I do it, here's how you
16 can do it. So basically, it was up to him
17 how he filled it. Either way -- either
18 way you task, you did this, you will get
19 air into that cylinder.

20 Q. Is it's appropriate to push down
21 on that to get air in the cylinder?

22 A. Yes.

23 Q. Does it help air go into the
24 cylinder faster?

25 A. Proba-- I'm going to say yes.

Page 190

1 Q. Okay. And you said that the
2 valve in our -- on our subject cylinder
3 had never been rebuilt; is that accurate?

4 A. That's accurate.

5 Q. Had it ever been taken apart, in
6 any capacity, as far as you know?

7 A. No.

8 Q. And to the best of your
9 knowledge, is the valve that was on there
10 at the time this subject cylinder was
11 being filled the same valve that
12 originally came with the cylinder?

13 A. At my purchase, yes. That was
14 on that valve when I acquired it through
15 the purchase of Catskill Fire in 2014.

16 Q. Okay. I'm going to show you
17 what we've previously marked as
18 Defendant's Exhibit 6. What I'm
19 particularly interested in you looking at
20 are the numbers up here in the left corner
21 of that OSHA -- oh, you're right, sorry --
22 that OSHA read off the stampings of the
23 cylinder. Do you have an understanding
24 what those numbers represent?

25 A. Yes.

1 Q. Okay. Could you tell what they
2 are.

3 A. DOT, Department of
4 Transportation, 4 bravo whiskey 225.

5 Q. And what does 4 bravo whiskey
6 225 mean to you?

7 A. That is from -- I'm not a DOT
8 facility, but I'm going to say that is a
9 lot number that Worthington manufactured
10 and assigned to the Department of
11 Transportation for this particular size
12 and type of cylinder.

13 Q. Okay.

14 A. And the 225, I'm going to
15 presume is --

16 Q. Well, I don't want -- I
17 want -- I want what your understanding at
18 the time would have been.

19 A. DO -- DOT 4BW is 225, those were
20 the markings that were assigned by the
21 manufacturer or by -- I think they would
22 be assigned by DOT to the manufacturer to
23 make this tank.

24 Q. Okay. Are there any other
25 stampings on there?

1 A. There is a number below it, it
2 says Worth, which is Worthington, which is
3 the manufacturer of the cylinder, 0898,
4 which is the month and year of the
5 manufacturing of that cylinder.

6 Q. And I see there's one more set
7 of numbers below the DOT4BW225?

8 A. M4543. Like I said, I -- I'm
9 not familiar with it, but I'm going to
10 presume that could be a lot number from
11 the manufacturer.

12 Q. Okay. So would it surprise you
13 to learn that the 225 is the listed
14 service pressure of the tank?

15 A. Don't know.

16 Q. Does that surprise you?

17 A. Probably not.

18 Q. Okay. So, knowing the
19 manufacturer's stampings list the service
20 pressure at 225, what would you understand
21 the cylinder could be filled to?

22 A. 225.

23 Q. And, with that understanding,
24 what would you expect the gauge on the
25 cylinder to say?

1 A. 225.

2 Q. And if on the day of the
3 incident -- well, I'm assuming that, since
4 you didn't recognize the 225 as being the
5 fill pressure, you probably never had any
6 conversations with Chris regarding the
7 fill pressure being stamped on the
8 cylinder?

9 A. Correct.

10 MS. STIGALL: Objection to form.

11 Q. At the time of the incident,
12 going back to that day --

13 A. Uh-hum.

14 Q. -- did you ever an understanding
15 what the 225 stamped on the cylinder
16 meant?

17 A. No. I always went by pressure
18 on the gauge.

19 Q. So when you were filling a
20 cylinder, you would look at the gauge to
21 determine the fill pressure; is that
22 correct?

23 A. Correct.

24 Q. And because you didn't have an
25 understanding of what the 225 stamping on

Page 194

1 the cylinder meant, you never had any
2 conversations with Chris telling him that
3 the service pressure may be stamped -- was
4 stamped on the cylinder?

5 A. That's correct.

6 Q. Now, I want to ask you a little
7 bit about setting the regulator when
8 you're going to fill a cylinder.

9 You testified -- and correct me
10 if I'm wrong, because it's kind of a
11 paraphrase -- you testified that, when you
12 go to fill a cylinder, you set the
13 regulator, whether you're filling it with
14 air or from the nitrogen tanks, to 25
15 p.s.i. above its service pressure.

16 A. Correct.

17 Q. Correct. So, if you were
18 filling a 175 p.s.i., you would set the
19 regulator to 200?

20 A. Correct.

21 Q. And does that mean that the
22 regulator only let's out 200 p.s.i. at a
23 time? In other words, once 225 p.s.i. has
24 moved through the regulator, does it shut
25 off automatically?

1 A. You can't get anymore air out
2 because your regulator is stuck
3 at two-twe-- you're set at 225. If you go
4 to fill up -- it's as if you're filling a
5 tire. You put 45 pounds in, once you hit
6 45 pounds, it shuts off. This doesn't
7 shut off. It just won't give you anymore
8 pressure.

9 Q. So no more pressure would come
10 out the regulator?

11 A. Correct, because it's set at
12 225. It's a set regulator.

13 Q. But is it a steady flow that
14 keeps coming?

15 A. Oh, yes --

16 Q. Okay.

17 A. -- until it --

18 Q. Until you --

19 A. -- hits --

20 Q. -- go and turn --

21 A. -- that --

22 Q. -- it off?

23 A. Until it hits that -- if you --
24 if you run a flow of air and you're set at
25 225, once it hits 225, you're gonna have

1 still air in that line, but you're not
2 gonna move anymore than 225, because
3 that's what the regulator is set at.

4 Q. Okay. I just wanted to clarify
5 that. Okay.

6 And you had made a comment that
7 the test tanks that were given to test the
8 kitchen -- or the fire suppression
9 systems -- were red and green; is that
10 correct?

11 A. The tank in question, yes.

12 Q. What was your understanding of
13 why it was red in green?

14 A. That's the way it was purchased
15 when Catskill Fire bought it from
16 Pyro-Chem as a test tank only.

17 Q. So, with your knowledge in the
18 industry, it's your understanding that a
19 kitchen fire suppression system that is
20 painted red and green is to be used as a
21 test tank only?

22 A. No.

23 Q. No?

24 A. Pyro-Chem tank only. I test
25 other systems besides Pyro-Chem and

Page 197

1 Pyro-Chem is the only one that has a green
2 label on it, that particular tank.

3 Everything else is whatever is out there.

4 Q. Have you ever seen another
5 Pyro-Chem test tank that was red and
6 green?

7 A. No.

8 Q. You didn't paint the tank, did
9 you?

10 A. No, I did not.

11 Q. Do you know if -- I think you
12 said you bought it from Rick. Do you know
13 if he painted the tank green?

14 A. No. It came from -- according
15 to my recollection --

16 Q. From Rick?

17 A. -- from what he told --
18 Rick -- from what he told me, he bought
19 that tank as a Pyro-Chem distributor from
20 Pyro-Chem that color, the way it was.

21 Q. Okay.

22 MR. FROMSON: Are you going to
23 ask him if he has any others exactly
24 like this one?

25 MS. MOLINEAUX: You can ask him.

1 MR. FROMSON: Do you currently
2 suppose any exemplary tanks just like
3 the one that was in this event?

4 THE WITNESS: No. I got those
5 instead (indicating).

6 BY MS. MOLINEAUX:

7 Q. And you had said that you were
8 told by one of the firemen that -- who
9 handled the call heard Chris say, "I
10 didn't hear the air flow, so I opened the
11 valve." Do you remember that?

12 A. Yes.

13 Q. And what valve do you understand
14 that to be that he opened?

15 A. Between the two-stage regulator
16 and probably six, seven, eight foot of air
17 hose to the tank he was filling, through
18 all the connections, there's a quarter --
19 there's a ball valve, which is an on/off
20 valve, and that's what he was using, you
21 crack the valve, and that's when he said
22 he didn't hear it, and pshwoot! full bore
23 opened it.

24 Q. And that would be the
25 quarter-turn ball valve that's in

1 Defendant's Exhibit 7 on the bottom?

2 A. Yes. You're correct.

3 Q. Thank you.

4 And may have said this, but I
5 just want to clarify. You said that you
6 had discussions with Chris that, if a
7 cylinder is overpressurized, something
8 will happen; is that correct?

9 A. Yes.

10 Q. And what is that something?

11 A. Well, A) if it's
12 overpressurized, whether it's an air
13 cylinder or a fire extinguisher,
14 overpressurize it, you can't go out the
15 door, because now it's overcharged, which,
16 technically, everything is supposed to be
17 in the straight up 12:00 position. If
18 it's overpressurized, it's easy to put too
19 much air in it or you weren't paying
20 attention, which means you have to start
21 the process over again and that that gauge
22 has to be at the 12:00.

23 Q. Or what would be the danger of
24 letting an overpressurized tank go out of
25 the building?

Page 200

1 A. As a joke, I've always said, if
2 it's overpressurized, you're just going to
3 get a little more pressure to put out the
4 fire, but, believe it or not, I've got
5 inspectors who are nitpickers and say,
6 "12:00. We're not taking 12:01 or 12:02.
7 12:00." I've actually had 'em come from
8 the factory, brand new, at 12:02, and I
9 got -- right out of the box. So, it can
10 happen. I've also had 'em come out of the
11 box with no pressure on 'em. So it's a --
12 it's a...

13 Q. Did you have an understanding at
14 the time of this incident that a tank that
15 was overpressurized exploded?

16 A. Yes. But I never, ever thought
17 of it going -- happening, to this extent.

18 Q. And why is that?

19 A. Based experience and training, I
20 just never forecasted anything ever to
21 happen. You never -- you never expect the
22 worst.

23 Q. So you made comments that you
24 are able to hydrotest low-pressure
25 cylinders, but not DOT cylinders, because

Page 201

1 you're not DOT certified --

2 A. Yes.

3 Q. -- I think is what you said?

4 A. You have to have a retest
5 facility --

6 Q. Okay.

7 A. -- a retest to license, which I
8 don't have.

9 Q. Is it your position that the
10 cylinder in this case was not a
11 low-pressure cylinder?

12 A. Yes. It was a low-pressure
13 cylinder, but it was a DOT low-pressure
14 cylinder --

15 Q. Okay.

16 A. -- which, to be honest with you,
17 all your kitchen system cylinders today,
18 even the newer ones, are DOT cylinders,
19 low-pressure.

20 Q. What type of low-pressure
21 cylinders would not be DOT?

22 A. A company called Amerex Fire
23 Extinguisher Company at one time made DOT
24 low-pressure cylinders, portables, but I'm
25 pretty sure -- they're still out there,

Page 202

1 but I'm pretty sure that they don't make
2 those cylinders anymore, but they're still
3 out in the field. And is the only
4 exemption to the rule. "Exception", I
5 should say.

6 Q. What's the only exception?

7 A. Is the only exception, is
8 Amerex. Everything is all non- -- all
9 your fire extinguishers today and all
10 your -- all your fire extinguishers,
11 portables, now are non DOT low-pressure,
12 except for this Amerex -- it must have
13 been a badge in a year in the mid to late
14 90's, but your kitchen suppression systems
15 today, that you buy, are low-pressure, but
16 they're DOT reg-- DOT cylinders. I send
17 out 25, 30 a month, I rotate them out,
18 send them out to a DO-- to retest 'em,
19 which is a company that did this one
20 (indicating).

21 Q. Okay. Now, I think you
22 testified that the high-pressure cascade
23 system that was used on that day was
24 filtered, clean, breathable air. Would
25 that be correct?

1 A. Yes.

2 Q. Why would you use filtered,
3 breathable clean air to fill up a cylinder
4 to do a balloon test that nobody was going
5 to be breathing?

6 A. That has nothing to do with it.
7 That has -- that's not -- that's not why
8 it was done. I could use anything. I
9 could have used shop air, which -- I could
10 use -- I could have used shop air, but I
11 couldn't, because my shop air compressor
12 only goes to 150. I needed 175. Yes, you
13 could have used nitrogen, but I think, at
14 the time, Chris specified to me that "I'm
15 low on nitrogen, waiting for a delivery of
16 tanks to come in, can I use air off the
17 compressor?" I says, "Fine." Air is air.
18 Air is air. Let's be real. And I said,
19 "You know how to do it?" He says, "Yes;
20 we've done it before." He says, "I know
21 the procedure. I'll fill it." So...

22 Q. Are you saying that conversation
23 happened the day of the incident?

24 A. It happened prior -- before this
25 incident and the week before and weeks and

1 weeks before, when I was -- those tanks
2 were probably always filled by those --
3 that cascade system. You got to remember
4 something, nitrogen is expensive,
5 required -- required to be put in portable
6 fire extinguishers, and there's a reason
7 why. Breathing air -- for a test for an
8 air tank, I could have gone to the gas
9 station and put in 50 cents in the machine
10 and gotten 175 air out of it. Air is air.
11 It's only for breathing, it's only for an
12 air test. That particular morning, A),
13 like said before, my shop air compressor
14 only goes to 150, I was low on nitrogen,
15 he had stuff to do to fill, which would --
16 prior to this test was a priority to fill
17 fire extinguishers, so I says -- he said,
18 "I want to fill it off the shop compressor
19 or the cascade system." I says, "Fine."
20 Same procedure. Just the air is air.

21 Q. So if your nitrogen had not been
22 low, would you have used the nitrogen
23 tanks?

24 A. That would have been his call,
25 but, again, I had four tanks of multiple,

Page 205

1 multiple quantities of air. Why would I
2 not use a cascade system if the gauges and
3 the procedures are right? Would I? It
4 would have been his call.

5 MS. MOLINEAUX: I'm just looking
6 through my notes.

7 THE WITNESS: Sure. Go ahead.

8 Q. Do you drug test your
9 applicants?

10 A. No.

11 Q. As someone who has been working
12 in this industry almost 30 years, why do
13 you think this happened?

14 A. Huh! I think -- and my honest
15 opinion -- that, based on what you -- I've
16 told you before, with the arguing back and
17 forth between Chris and Frank, I think
18 there was a drug deal going down. I think
19 something happened prior to that morning.
20 Where on my -- where? It could have
21 happened out of my office -- I don't
22 know -- and I think that something went
23 down, something was going to go down, I
24 think there was a transaction of drugs or
25 money, and Frank Buono can say what he

Page 206

1 wants, but I think he went into that room,
2 confronted Chris, Chris was distracted,
3 and if you look at the OSHA findings, the
4 bottom line was overpressurization of a
5 cylinder due to carelessness.

6 It seems awful funny that I got
7 a 36-year old man, who's very suave as far
8 as mechanics and everything else, can fill
9 the exact same tanks, same procedure, same
10 this, this, this, one week ago, if not two
11 years ago, and that morning something
12 happens. He's filled 'em with other
13 people in the room before, I've been in
14 there watching him fill 'em, he's sitting
15 with Robby, everybody. Distraction was on
16 something else and it wasn't business
17 related, and I think it was drug-related.
18 That's my honest opinion as the employer.

19 Look, it's too -- it's too
20 coincidental -- I could see if he just
21 walked in the shop 30 days ago and I put
22 him on something. But if you look at the
23 big picture, the man was well rounded,
24 he's done this before. It's not like I --
25 you know, it's not like he didn't know

Page 207

1 what he was doing. Something -- something
2 caused it. Whether it was the heater,
3 maybe, but if the heater was on, he still
4 would have known to shut that gauge off,
5 that machine off at 12:00, but to have
6 somebody else talking to him or arguing
7 about something else, yes, and I'm going
8 to stick to that.

9 Q. In Chris's statement to OSHA, he
10 mentioned online training and courses. Do
11 you know what training he would be talking
12 about, specifically?

13 A. Probably the in-house training
14 that I would do. And let me explain how
15 that works. I, as the owner of a company,
16 through the association I belong to and
17 all my training, I, as the employer,
18 absorb all the training. I do 24, 30
19 hours a year worth of training off
20 premises to keep my certifications, and I
21 would come back with the information and
22 all the booklets and I would train my
23 people. Okay.

24 Just for instance, on this
25 compressor, I learned, in the fire

1 service, I trained my guys as fire chief
2 or as lieu-- captain and, in turn, when I
3 bought the system, I trained whoever was
4 involved.

5 I might have shown Robby -- her
6 son worked for me. Robby might have seen
7 me do it. Did he actually physically do
8 it? Probably not. Chris, being that he
9 was my shop guy, whether it was in my old
10 building or new building, I would train
11 him. And this is how it's done. You
12 know, there's ways to do it.

13 But that -- I did all the
14 training.

15 Q. So is it your position that
16 Chris didn't engage in online training or
17 courses?

18 A. No.

19 Q. Okay.

20 A. At the present time -- at that
21 time, no.

22 Q. Okay. So, if he mentioned in
23 his statement that you provided him a list
24 of courses, you wouldn't know what courses
25 he was talking about?

1 A. I don't know what courses he was
2 talking about, and, to schedule the
3 courses, and, like I also said this
4 before, being a single dad and when he was
5 with his daughter, if I was going to
6 schedule, I would have had to-- it would
7 have been very difficult, due to the fact
8 being a single dad and working with his
9 daughter's schedule, single dad, that
10 would have been a conflict, but there were
11 courses. Would I have sent him on
12 courses? I probably would have, down the
13 road. But, like I said before, a lot of
14 training he did in the shop was based on
15 what I learned through my experience and I
16 would just train everybody.

17 Q. But I guess what I'm trying to
18 understand, is there a list of courses
19 that you keep that you hand out to
20 employees?

21 A. There is a course, I have sent
22 my other guys out for classes, yes, and
23 Chris just wasn't out there to go for any
24 courses. There are courses available.

25 Q. But I'm trying to -- I'm just

Page 210

1 trying to gather, if Chris said in his
2 statement, "Brian provided me with a list
3 of courses," would you know what list he
4 was speaking of?

5 A. No.

6 Q. Okay.

7 MS. MOLINEAUX: I think that's
8 all I have for now.

9 MS. STIGALL: I don't have very
10 many, so...

11 THE WITNESS: More?

12 MS. STIGALL: Yes. Sorry.

13 REEXAMINATION BY MS. STIGALL:

14 Q. You purchased the tank when you
15 purchased -- the cylinder at issue in this
16 case, when you purchased --

17 THE VIDEOGRAPHER: Is your mike
18 on? I didn't mean to interrupt, but
19 you might want to start that over.

20 MS. STIGALL: Thank you.

21 Q. I believe, if I remember
22 correctly, you said you purchased the tank
23 when you purchased the business in, what
24 year was that?

25 A. August of 2014, from Catskill

Page 211

1 Fire.

2 Q. So, other than occasionally
3 using the tank prior to that time, I take
4 it that you would not be able to say
5 whether a valve that's on a tank from 1998
6 had ever been rebuilt prior to the time
7 that you purchased it in 2014?

8 A. Yes, that's correct.

9 Q. So you really can't -- it could
10 have been rebuilt in that time; you
11 couldn't say one way or another?

12 A. Correct.

13 Q. Additionally, we were talking a
14 little bit about the gauge in the case.
15 Prior to you gaining possession in -- of
16 the tank, could it be possible that, at
17 some point, the gauge was switched out
18 with another tank?

19 MR. FROMSON: Just objection as
20 to form.

21 A. Could it have been? It wasn't
22 done by me.

23 Q. I'm saying that you didn't take
24 possession of the tank till 2014.

25 A. Correct.

Page 212

1 Q. So all I'm saying is, you can't
2 rule out that, at some point, say a gauge
3 got smashed, or damaged, or whatever, and
4 the gauge was switched out on that tank --

5 A. I can't say.

6 Q. -- prior to your possession?

7 A. I'm gonna say I can't say. I
8 don't know.

9 Q. Right. Are you aware that OSHA
10 tested the gauge and found it to be
11 working properly at the pressure it was
12 supposed to be working at?

13 A. Yes.

14 Q. And that doesn't surprise you,
15 does it?

16 A. It doesn't.

17 Q. Because you normally don't see
18 gauges go bad --

19 A. Exactly.

20 Q. -- I think you said?

21 It's my understanding from your
22 testimony earlier that you trained Chris
23 to look at the gauge, to be aware of what
24 the fill pressure was for the cylinder.

25 A. Correct.

1 Q. And that was a part of the
2 procedure or the steps that you taught him
3 in filling a cylinder at the Poseidon
4 system --

5 A. Yes.

6 Q. -- correct?

7 So, according to the proper
8 procedure that you taught him and what you
9 saw him do over the years, would you have
10 expected that on the morning of this
11 incident he would have looked at that
12 gauge as a part of his standard procedure
13 and determined what the proper fill
14 pressure was?

15 A. Yes.

16 Q. And he would have known he
17 shouldn't fill it over that pressure
18 that's shown on the gauge in the green?

19 A. Yes.

20 Q. I barely touched on Defendant's
21 Exhibit 22, which is, basically, it look
22 like an outside -- I don't know if this is
23 a prescription or if it's something that a
24 Fentanyl patch goes into. It's my
25 understanding that that was -- and I'm

Page 214

1 just trying to make sure I have this
2 right. Is it correct that your wife, when
3 she was looking for the keys to move
4 Mr. Foust's car, either the day of the
5 incident or the next day, found this in
6 his things?

7 A. Yes.

8 Q. And was there at some point also
9 a Fentanyl patch found?

10 A. That I can't say. I -- I can't
11 say.

12 Q. Okay. Well, I saw something in
13 notes that was in that spiral notebook --

14 A. Okay.

15 Q. -- that was put together, and
16 maybe I'll just ask you whose handwriting
17 it is. If you can just look at where it
18 says "Note", there's a star, and can you
19 tell me whose handwriting that is.

20 A. "Note: Fentanyl patch 100
21 milligrams was found here at our office,
22 including one used one in Chris's coat
23 pocket." This was witnessed by several
24 people: Bruce Pennings, Rick -- these are
25 employers -- Rick Dillon, Robert Hawkins,

Page 215

1 myself, and Patty. That's Patty's
2 penmanship. That's her writing.

3 We were looking for the keys to
4 his car that day, so the first thing you
5 do is, you start with his coat.

6 Q. And according to this, in the
7 coat pocket, shortly after the incident,
8 you found a Fentanyl patch 100 milligrams,
9 and including a used one in Chris's coat
10 pocket.

11 A. Yes.

12 Q. Did Chris ever mention to you
13 being on Fentanyl?

14 A. Not to my knowledge.

15 Q. And then we talked a little bit
16 before about the arguing that was going
17 on, or that you heard was going on prior
18 to this incident.

19 Can you read this. It says
20 "Thursday..." -- start -- just read
21 slowly for the court reporter, starting at
22 "Thursday, February 18th..."

23 First, whose handwriting is
24 that?

25 A. First of all, that's Patty --

Page 216

1 Q. Your wife.

2 A. -- Scott, my wife.

3 "Thursday, February 18th.

4 Employee, Kimberly Tremberger. Kimberly
5 arrives at the office every morning at
6 9:15, 9:30. She states that Chris and
7 Frank were verbally fighting every morning
8 that week of the accident. When I, Patty,
9 arrived at the office at 10:00 a.m., they
10 did not raise their voices at all."

11 Again, what's this -- what's the
12 fighting about? It wouldn't be about fire
13 extinguishers.

14 Q. Are you aware that, when OSHA
15 tested the cylinder, they didn't find any
16 type of defect in terms of the cylinder
17 itself?

18 A. Yes. I'm aware of that.

19 Q. And are you aware that they
20 found that it was simply overpressurized
21 to the extent that it eventually ruptured?

22 A. Yes.

23 MS. STIGALL: I think that's all
24 I have. Thank you.

25 THE VIDEOGRAPHER: Okay. Please

Page 217

1 stand by. The time is 3:13. We're
2 going off the record. This is the end
3 of Media File No. 4 and that concludes
4 this deposition.

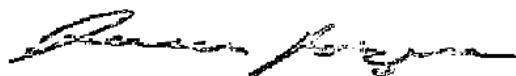
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Page 218

1 C E R T I F I C A T I O N
2
3
4

5 I, ABNER D. BERZON, a Registered
6 Professional Reporter, Certified
7 Realtime Reporter and Notary Public,
8 do hereby certify that the foregoing
9 witness, BRIAN SCOTT, was duly sworn
10 on the date indicated, and that the
11 foregoing is a true and accurate
12 transcription of my stenographic
13 notes.

14 I further certify that I am not
15 employed by nor related to any party
16 to this action.

17
18 
19

20 ABNER D. BERZON, RPR, CRR
21

22 Notary Public, State of New York
23 No. 01BE6303311
24 Qualified in New York County
25 Commission Expires 5/12/18

Page 219

1 E X H I B I T S
2

3 Defendant's

4 NO.	5 DESCRIPTION	6 PAGE
5 10 subpoena		8
6 11 various documents related to		18
7 safety procedures		
8 12 February 12th, 2016 incident		55
9 report and letter to U.S. DOT		
10 13 Answers to Exhibit A		56
11 14 employee handbook		57
12 15 Christopher Foust's employment		59
13 file		
14 16 Plaintiff's employment file		63
15 17 an Oprandy's January 24th, 2018		70
16 letter to OSHA and various		
17 other letters		
18 18 seven pages that relate to		92
19 various contacts and background		
20 information made after the		
21 incident		
22 19 time cards for Chris Foust and		148
23 Frank Buono for February 2016		
24		

25 (Exhibits Continued on following page.)

Page 220

1 E X H I B I T S (Continued)

2

3 Defendant's

4 NO. DESCRIPTION PAGE

5 20 Worker's Compensation claim 148

6 notes for Chris Foust and
7 Frank Buono

8 21 copy of a spiral notebook 149

9 containing notes kept by Patty
10 Scott relating to contact with
11 parties involved with the
12 accident13 22 prescription for Fentanyl 150
14 Transdermal System15 23 diagram drawn by witness at 152
16 today's deposition showing
17 layout of room where incident
18 occurred

19

20 Plaintiff's

21 NO. DESCRIPTION PAGE

22 1 photograph 184

23

24 (Exhibits retained by counsel.)

25

Page 221

1 EXAMINATION INDEX
2
3
4

5 WITNESS :

6 BRIAN SCOTT
7

8 BY PAGE (S)
9

10 MS. STIGALL: 6, 210

11 MR. FROMSON: 153

12 MS. MOLINEAUX: 187

13

14

15

16

17

18

19

20

21

22

23

24

25

[& - 225]

Page 1

&	12401 2:4 1279 1:14 4:23 12:00 84:14 85:10 97:21,21 102:16 165:8,9,11 176:14 180:4 199:17,22 200:6,7 207:5	18 62:1 71:7,8 92:17,18 116:6 134:4 136:9,9 219:6,18 1800 80:7,8 84:8 184 220:22 187 221:12	80:8 118:3 119:8 143:1 2001 186:1 2002 186:1 2007 118:24 119:2 2013 17:7,9,23 2014 31:24 44:23 46:16,24 120:2 190:15 210:25 211:7,24 2015 16:24 58:13 80:7 120:2 2016 7:5 31:21 38:5 39:18 46:21 49:21 54:21 55:17 65:13 66:24 107:23 148:10 162:19 181:18 219:8,23 2017 50:4 151:21 2018 1:10 4:3 70:8 70:13 219:15 205 144:7 20th 107:22 116:6 21 118:23 149:18 149:25 150:14 220:8 210 221:10 211 167:9 2121 2:9 22 150:16,21 151:11 213:21 220:13 220 96:1 144:7 225 102:3,4,10 177:10 185:10 186:6,16 191:4,6 191:14,19 192:13 192:20,22 193:1,4 193:15,25 194:23 195:3,12,25,25
0	01be6303311 218:22 05915 1:3 4:20 0898 192:3	12:01 200:6 12:02 200:6,8 12:51 146:4 12th 7:5 11:24	18th 215:22 216:3 19 118:7 148:4,8 219:22 195 41:9 95:17,19 95:20,25 99:22
1	1 4:14 11:22 63:1 73:8,17 138:4 139:3 144:7,7 146:5 178:18 184:23 220:22 10 7:22 8:3 39:24 56:15 219:5 100 41:8 95:18 140:19 151:20 214:20 215:8 10940 6:20 7:2 10:00 103:15 105:5 216:9 10:02 1:11 4:2 10:18 18:19 10:20 19:2 10th 16:24 11 18:11,12,21 19:10 54:18 58:22 219:6 11:00 127:8 166:9 11:05 62:23 11:06 63:4 11:35 92:7 11:54 92:10 12 54:19,20 55:16 61:23 63:11 99:19 99:21 219:8	13 56:11,12 63:20 219:10 14 32:2 45:6 57:11 57:12 67:11 120:5 219:11 148 219:22 220:5 149 220:8 15 32:2 58:6,12,14 59:24,25 60:4,19 138:21 219:12 150 203:12 204:14 220:13 152 220:15 153 221:11 16 63:16,17 134:4 136:9,9 148:14,16 219:14 17 70:7,12,21 219:15 175 102:5,6,7,17 140:3 142:12,24 184 12,16 185:11 186:5,7,11,20,22 187:6 194:18 203:12 204:10	1959 116:7 1973 116:14 1977 116:17 1979 57:22 117:15 118:10 1980 116:17 1984 117:5 1987 117:5,12 1989 31:8 119:8,20 1992 26:1 117:12 117:24 1995 27:10 1998 45:3 57:17,23 211:5 1:49 147:2,6 1st 17:3 2 2 1:10 19:6 40:5,9 56:16 63:6 73:8 73:17 80:9 2.4 186:21 20 107:21 138:15 140:3 148:18,22 149:1 220:5 200 76:23 96:8 140:20 144:7,8 177:10 194:19,22 2000 31:10 33:20 34:20 36:12 39:9

[225 - adjusted]

Page 2

196:2			
23 17:23 152:2,8 220:15	5	9	151:1,4,6,12,13,14 185:13 216:8 220:12
23rd 17:7,9	5 6:19 37:25 39:11 73:8,17	9 7:22 39:24 51:8 62:12 75:18 78:19	accommodating 122:6,13
24 151:14 207:18	5/12/18 218:23	78:25 83:6,8 94:1	accompanying 33:11
240 41:9	50 204:9	123:21	account 126:13 167:2
24th 69:18 70:8,13 219:15	500 174:7 178:18	90's 202:14	accounts 35:7,17 36:2 108:10
25 95:20,23,24 96:1 99:22 144:3 144:6 194:14 202:17	55 219:8	911 132:8,20 155:17 156:11	accurate 171:22 190:3,4 218:11
2555 2:15	56 219:10	92 219:18	acknowledgment 16:4
27 118:2	57 219:11	94596 2:9	acquired 171:24 190:14
2:26 187:15	572 2:4	99 95:21	acquisition 44:2 49:25
2:42 187:19	59 219:12	999 41:5	acronym 181:4
2nd 4:3		9:00 104:12,14,14 105:5 126:4,5,8 165:9	action 1:3 5:4 7:11 218:16
		9:15 216:6	actions 169:1
3	64108 2:15		actual 49:13 175:4
			adaptor 75:14 79:21,21 83:21 87:24 88:2 176:7
3 22:19,20 30:7 73:8,17 147:7			adaptors 35:21 79:17 81:1
30 118:19 202:17 205:12 206:21 207:18	7		add 18:5
300 1:15 4:23 28:2	7 44:1 49:23 73:8 86:3 87:2 199:1		addendum 17:23
36 206:7	70 219:15		addition 5:21 6:1
3:13 217:1	700 174:8		additional 147:23
	77 116:14		additionally 211:13
	79 117:20		address 6:18 7:6 17:14 122:1 149:5
	7:00 165:10		adjust 100:7
	7:17 1:3 4:20		adjusted 99:13 100:18,20
4			
4 30:9 33:3 37:2 38:6 39:11 59:19 73:8,17 75:19 76:6 191:4,5 217:3	8 50:9 75:18 76:18 77:9 78:10 80:18 82:16 219:5		
4,000 168:11	8/17/2015 16:9		
40 122:11 184:6	875 2:9		
45 195:5,6	8:00 165:9		
4500 138:9 143:1 168:12,16	8:15 125:18		
49 7:1 182:10	8:20 125:19		
4bw 191:19	8:25 125:24		
	8:30 105:3 125:24		
	8:50 126:5		
	8:55 126:6		

[affiliated - assigned]

Page 3

affiliated	26:10,13	45:12,22 49:2	184:4 187:25	approximately	160:3,10 161:1,16	
affixed	174:15	56:22 74:25 79:5	amerex	26:17	162:15 164:3	
175:9		86:17,19 87:20	201:22 202:8,12		168:11 187:1	
afraid	18:16	89:11 90:14 91:15	amount	86:23	april	69:17
afternoon	147:5	97:17,18 98:11	ansul	2:17 26:17	architect	136:5
153:5,9 187:25		109:8,23 110:11	27:1		area	11:25 102:15
agency	25:23	110:16,19,23	answer	9:12,18	143:23 164:4	
agent	13:21 38:4	111:1,3,7,9,22	10:15,23 78:8	arguing	103:12,15	
39:18 40:3 41:12		112:1 115:12	155:15,16 157:6	104:25 105:6,8,19		
41:23 42:4 43:22		119:7 127:6,17	157:10 182:5	205:16 207:6		
48:24 74:20,21,22		128:6 132:18	183:7,20	215:16		
80:15 81:22 84:23		135:15 137:3	answered	10:14		
85:14 87:12 90:10		138:10,10,12,14	115:7	argument	102:24	
91:18,19 93:11,19		140:4,6,22,23	answers	105:23 106:9		
94:5 129:10		142:25 143:10,15	55:24	arguments	103:2	
158:25 173:15,24		153:22 154:5	56:12 153:13	103:6,7		
174:18,21 186:8		157:24 158:2,10	219:10	arlene	115:6	
aggregate	66:13	159:3,10,13,18	anticipate	9:20		
ago	118:2 128:4,19	162:8,23,23,24	anticipating	157:8		
142:8 165:24		167:11 169:4	anybody	36:16,18		
171:25 206:10,11		172:9 178:3,22	115:12 119:16,17			
206:21		179:9,14,15 182:3	129:24			
agree	4:13 169:25	184:9 189:7,9,10	anymore	104:5		
agreed	3:4,10,14	189:11,19,21,23	195:1,7 196:2			
agreements	63:21	194:14 195:1,24	202:2			
ahead	5:22 7:21	196:1 198:10,16	anyway	14:18		
15:10 18:3 29:19		199:12,19 202:24	45:5 96:10			
55:8,21 56:10		203:3,9,10,11,16	apart	45:12 74:10		
57:10 62:17 63:7		203:17,17,18,18	190:5			
131:18 147:21		204:7,8,10,10,10	apologize	187:4		
168:7 185:24		204:12,13,20,20	apparatus	35:3		
205:7		205:1	174:4			
air	1:7 13:20 14:20	al	appearances	5:8		
15:4,4 17:7 19:24		1:8	58:19	111:16 158:5,9		
20:8 30:12 31:9		alarms	160:12 162:17			
31:17 33:5 34:2,3		159:12				
34:9,9,24 35:3,10		albany	applicants	164:12 169:6		
35:12,21 37:3,4,5		67:24	205:9			
37:9 38:4,13,22		alcohol	application	174:22 175:1,5,8		
39:17 40:2 42:4		10:20	62:10			
43:21 44:17 45:10		allow	applied	177:1 178:21		
		10:10	66:22 67:1			
		152:23 189:7	appreciate	180:22 181:16,20		
		alongside	157:9			
		134:2	184:4			
		alright	appropriate	185:6 189:6		
		8:15	101:22 189:20			
		172:12 175:2	assessment	123:11		
			assigned	64:3		
			145:13 191:10,20			

[assigned - bore]

Page 4

191:22 assigning 160:25 163:3 associate's 116:22 association 207:16 assume 76:11 149:7 170:9 assuming 38:11 193:3 attached 164:12 attempted 165:23 attempting 157:23 attendance 5:25 7:18 attention 199:20 attorney 152:23 attorneys 2:5,10 2:16 69:8 audio 4:10,11 august 17:3 46:16 46:23 50:4 58:7,9 58:13 151:21 210:25 auth 28:15 authored 54:6 authorities 158:17 authority 159:25 authorized 27:11 28:20 auto 1:7 automatically 168:15 194:25 available 25:15 31:10 168:9 186:8 209:24 avenue 7:2 17:3 182:10 aware 101:11,21 212:9,23 216:14 216:18,19	awful 206:6 b b 2:6 6:7,15 7:1 103:22 105:16 111:1,10 147:9 219:1 220:1 back 19:2 36:23 45:9 56:16 63:3 68:17 81:9,23,24 86:17 92:9 99:24 115:9 116:3,24 124:2 127:16,24 130:24 132:7,7,20 136:20 139:9 145:6,16 147:5 160:18 161:14 163:22 164:24 166:24 171:12 173:16 177:8 181:18 182:11 186:1 187:19 193:12 205:16 207:21 backed 100:1 background 92:20 93:1 116:4 219:19 bacon 2:14 bad 9:21 96:15 178:16 212:18 badge 202:13 ball 22:5,6 72:19 72:20 84:1 86:4 86:18 88:3 94:13 94:14,14 96:4 111:18 198:19,25 balloon 127:7 158:21,22 159:9 159:21,24 161:10 166:2,18,19,23 167:16 203:4	balloons 159:6,13 baltimore 26:7 bang 111:12 bank 140:14 barely 213:20 based 26:16 96:21 98:19 101:9,19 143:2 169:20 200:19 205:15 209:14 basic 52:24 125:1 basically 12:14 14:7,8,19 20:1 53:21 55:23 65:25 71:20 72:9 74:10 86:22,22 88:5 95:11 97:14 100:9 123:14 124:5 152:12 178:5 189:14,16 213:21 basis 31:16 165:20 184:15 bci 52:13,17 67:17 bear 115:25 beer 125:23 beginning 32:18 37:13 63:5 125:5 147:7 behalf 5:14,16 believe 51:12 185:9 200:4 210:21 believing 184:15 belong 120:23 121:2 207:16 belonged 151:9 belt 81:12,15,25 82:7 bench 76:21 79:8 80:23 82:5 94:12 145:22	benefit 157:6,12 183:11 benefits 117:16 bent 177:24 berzon 1:15 5:2 6:8 218:5,20 best 10:1 44:25 190:8 better 13:4 20:18 135:11,12 beyond 137:13 big 48:13,14 72:20 106:22 134:3 178:3 206:23 binder 21:20,24 30:15 bing 121:23,23,24 121:24,24 123:23 123:23,23 birth 116:5 bit 15:16 20:15 61:16 93:6,10,18 116:4 123:1 194:7 211:14 215:15 black 83:20 119:12 blakely 119:18 blowing 110:19 blown 177:25 blowoff 174:6 blows 174:10 board 57:23 boards 134:5 body 98:10 106:23 bohemia 66:15 book 21:9 150:9 booklets 207:22 boom 125:9 127:20 bore 109:9,24 110:11 118:1
---	---	--	--

[bore - cascading]

Page 5

198:22	brian 1:13 4:15	80:10 99:7 102:22	159:8 198:9
bored 113:3	6:1,15 210:2	103:11 105:24	204:24 205:4
born 116:9	218:9 221:7	123:8 128:4,15	called 26:6 44:24
borrow 45:6,8	brief 63:2 92:8	129:9 130:7	66:16 86:4 108:15
bottles 34:6,8,19	153:8 187:17	145:13 148:6,9,15	140:14 155:16
34:25 35:14,24	bring 11:14 12:2	148:20 149:7	201:22
37:9,10,11 79:23	19:5 58:24 61:15	152:19 169:2,22	calls 132:20
80:5 154:5	64:5,17 67:7	170:11 183:4,13	camera 78:4 93:25
bottom 44:20 86:6	110:22 125:21	205:25 219:23	canajoharie 66:17
123:6 184:9 199:1	138:18 188:10	220:7	candor 184:5
206:4	broadway 2:4	buono's 11:23	187:22
bought 17:1 30:24	broke 133:11	23:7 59:7 61:23	capacity 190:6
30:24 31:7,11,12	154:20,25 155:20	bureau 52:17	captain 208:2
31:12,13 32:7	156:1,10	burke 116:13	car 150:25 151:7
45:1 57:22 58:15	broken 155:25	bush 103:24	151:16 188:14
65:19 117:15,19	177:24	business 34:5	214:4 215:4
118:4,6,6,9,10	brookline 7:1,6	44:24 46:17 57:19	carbon 162:25
119:8,13 134:5	17:2 182:10	57:21,22 64:10	card 172:6 174:16
196:15 197:12,18	brother 57:23	66:11 106:16	175:9
208:3	104:2 105:4,7	116:22 117:15,18	cards 148:5,9
boulevard 2:9,15	121:8,10	118:2,13 121:11	219:22
bowles 2:8	brought 11:9 31:2	149:16 163:18	care 130:7,18
bowlesverna.com	59:1 188:14	206:16 210:23	carelessness 206:5
2:12	bruce 214:24	buy 28:4,5,6 31:1	carrier 64:2 66:14
box 185:18 200:9	building 42:16	79:24 122:25	cascade 17:8,25
200:11	58:5,15 64:14	126:16 186:6	22:1 68:11,12
boy 87:8	65:3,9,11,19,24,25	202:15	86:11 87:13
brand 126:25	66:2 77:20 122:22	c	100:23 110:25
145:20 200:8	123:2 132:22	c 2:1 6:7,16 79:4	111:9 138:11
brass 47:23	134:22 138:8	135:5 147:9	140:9,13,20 141:1
bravo 191:4,5	151:3 158:18	167:22 218:1,1	141:3,21 142:15
break 10:8,10,13	168:3,4 199:25	caked 96:14	142:19 154:4,9
10:17 69:25 70:4	208:10,10	calibrate 38:24	158:3 168:10,18
70:24 92:1,12	built 21:14 174:2	180:18	171:10,18,19,24
147:24	bump 96:14	calibration 180:8	172:3 174:15
breathable 202:24	bumped 121:15	california 2:9	202:22 204:3,19
203:3	bunch 172:12	call 28:8 42:8 75:6	205:2
breathing 34:9,9	buono 1:4 4:17	81:12 83:20	cascaded 112:1
35:2 142:25 174:3	5:10 14:25 25:3	106:17 109:2	cascades 173:21
184:9 203:5 204:7	29:24 43:11 60:24	127:13,24 155:17	cascading 111:9
204:11	71:5 72:8 77:12	156:11 158:21	

case 4:20 53:8 54:13,14 64:2 120:7 169:19 175:5 180:22 181:15,21 201:10 210:16 211:14 catching 32:21 category 51:23 catholic 116:13 catskill 44:24 46:10,23 114:25 190:15 196:15 210:25 caused 108:25 207:2 cellphones 4:7 cellular 4:6 center 100:14 cents 204:9 certain 30:10 36:22 81:4 95:15 169:20 172:21,24 173:2,5,9 175:20 175:23 176:1,4,7 certificate 167:23 182:19 183:1,5 certificates 183:14 certification 3:6 certifications 207:20 certified 1:16 25:25 169:11 170:11 201:1 218:6 certify 16:19 17:8 170:14 218:8,14 chain 125:14 chambers 137:7 chance 96:10 chances 178:11,15	change 168:5,5 changes 120:17 changing 141:11 channels 28:11 charge 81:19 85:11 173:5 176:4 check 62:2 99:3 143:16 177:21 180:6 checked 126:6,7 checking 72:11,12 chem 24:23,25 25:6,11,13,20,21 27:16,22,23,25 28:5,12,13,23 29:14,21 41:20 44:16,16 45:1,2,14 50:22,24 81:6 85:13 162:3 181:11,22 182:18 182:25 183:5,14 183:22 184:19 185:25 186:6,19 196:16,24,25 197:1,5,19,20 chemical 72:13 95:23 178:23 181:24 182:9 chief 12:22 31:3 109:4 118:24 132:23 208:1 chris 2:23 14:8 16:4 19:14 20:5 36:17 61:6 67:22 71:11,17,19 72:5,7 73:9,11,20 103:12 106:20,22 108:1 108:19,24 112:3 113:22 115:13 121:16 123:16,17 123:25 124:1,6,6	124:13 125:12,25 126:1 127:6,10 128:12,18 129:9 129:15 132:5 133:21 134:24 135:6,23 136:22 142:8,16 143:24 144:13,15 148:6,9 148:13,20 149:5 151:4,9 157:22 160:2,25 161:5 163:3,7 165:22 169:10 188:4 189:12 193:6 194:2 198:9 199:6 203:14 205:17 206:2,2 208:8,16 209:23 210:1 212:22 215:12 216:6 219:22 220:6 chris's 61:17 121:11 207:9 214:22 215:9 christopher 4:24 14:24 16:20 17:9 22:21 23:12,23 24:14,24 29:23 39:15 40:1,16,25 42:11 43:19 58:22 58:25 60:1,6,12,15 61:4 95:2,6 96:20 97:2 98:17 101:9 102:25 105:25 107:11 121:4 219:12 citation 157:17 citations 156:24 city 2:15 185:17 civil 1:3 7:11	claim 148:19,24 149:5,6 220:5 clarification 91:23 156:13 162:14 163:15 169:17 170:25 171:9 clarify 21:23 196:4 199:5 clarifying 130:23 139:17 140:1 classes 209:22 classifications 71:15 clean 202:24 203:3 cleanup 150:7 clear 72:1 151:10 174:13 clip 153:1 178:3 clockwise 101:4 close 39:5 90:3 116:8 126:8 188:19,20,21 closed 127:18 coat 214:22 215:5 215:7,9 code 168:3 codes 66:19 coffee 122:25 coincided 68:1 coincidental 206:20 cold 109:18 127:19 coldest 109:19 collar 44:20 186:19 collect 117:25 collected 93:2 college 116:15,16 color 197:20
--	---	---	--

[come - correct]

Page 7

come 48:10 72:15 82:7 83:18 103:14 103:24 104:13 105:3,10 121:3 122:24 123:8 124:2 126:4 129:12 139:4 159:6 163:22 170:5,21 195:9 200:7,10 203:16 207:21	compensate 186:3 compensation 64:1,9,22 67:2 148:19,24 220:5 compilations 51:9 compiled 55:6 complaints 123:5 complete 28:7 47:7 completely 9:17 10:23	172:3 173:22 174:14 203:11,17 204:13,18 207:25 computer 123:3 concept 91:13 138:5 concerning 7:3 13:19 15:1,3 17:24 105:25 143:25 concludes 217:3 concrete 134:23 136:17 confidential 61:19 configured 171:12 confirm 173:15 174:20 conflict 209:10 confronted 206:2 connect 83:24,25 83:25 88:20 94:15 connected 22:3 158:3 connecting 47:10 connection 48:3 85:20 89:14 94:16 94:17 141:7,9 189:1 connections 94:6 94:21,25 131:11 198:18 conscious 109:6 109:16 133:24 consecutive 7:14 18:8 63:15 70:3 consider 157:9 171:10 considered 61:19 console 133:5 constructed 134:5 171:11,19,23	consultants 26:7 contact 120:10 125:11 149:21 150:11 220:10 contacts 92:14,19 92:25 219:19 contain 51:5 52:4 contained 35:2 118:14 142:25 174:3 containers 95:8 containing 149:19 220:9 content 65:24 context 170:13 continue 4:12 131:17 182:20 continued 147:12 219:25 220:1 contract 28:17 control 27:25 48:4 94:13 132:10 conversation 9:19 203:22 conversations 4:5 193:6 194:2 cop 106:23 copies 67:7,8 162:25 copper 48:6 copy 11:17 16:2 17:4 63:20 69:12 69:14 149:18 150:2 220:8 corner 134:8 136:20 190:20 correct 8:14 16:6 16:10,11,25 17:10 17:12,21 19:15 20:13 22:18 23:5 23:10,18 27:13,14
---	---	---	--

[correct - days]

Page 8

27:15 28:10,14,16 29:12,15,25 30:4,8 30:16,18 32:10 33:17 35:11,12 36:3,6,6 38:10 39:4,7,10,22 42:9 43:17,23 50:1,20 51:4,24 54:4 56:3 59:6 63:12 65:12 65:14 69:2,4 73:23 76:15 78:16 85:4 88:17,18 89:23 90:8,25 91:1,2,17 93:13 96:25 99:15,16 102:1,13,18 107:12,24 110:9 115:22,22 128:16 131:15 140:9 141:4 142:3,4 151:2,17 154:11 154:13 165:2,3 170:18 171:7 185:3 193:9,22,23 194:5,9,16,17,20 195:11 196:10 199:2,8 202:25 211:8,12,25 212:25 213:6 214:2 correctly 210:22 corroborate 166:12 cosmo's 167:8 186:25 costly 159:20 counsel 3:4 4:16 5:7,18 8:9 220:24 count 115:3 counterclockwise 100:15,16 101:3,4	country 25:25 county 46:13 116:16 218:22 couple 60:13 67:20 103:25 104:1 118:6,9,10 126:14 153:9 course 119:3 163:18 209:21 courses 207:10 208:17,24,24 209:1,3,11,12,18 209:24,24 210:3 court 1:1 3:17 4:19 5:1 6:3 8:20 9:2,5,24 32:25 157:7 215:21 courtesy 82:12 cover 38:7 coverage 63:23 65:21 66:13 covered 65:22,23 65:23,23,24,25 covering 64:9,11 crack 86:18 198:21 crafty 98:8 122:17 creek 2:9 crew 136:12 cried 108:6 criminal 52:17 crr 218:20 currently 22:12 198:1 customer 72:22 145:6 cv 1:3 4:20 cycle 159:10 cylinder 50:6 70:16,18 72:14 81:13 84:12,17	91:16 94:7 97:9 97:19 99:4 101:15 101:21 130:24 133:14 140:11 143:15 158:8 159:1 160:21 162:16 169:5,7,8 174:3 175:8,11,14 186:17,21 188:6 189:11,19,21,24 190:2,10,12,23 191:12 192:3,5,21 192:25 193:8,15 193:20 194:1,4,8 194:12 199:7,13 201:10,11,13,14 203:3 206:5 210:15 212:24 213:3 216:15,16 cylinders 17:11 34:13 36:4 40:12 40:19 101:13 118:14 142:17 169:24 170:7,7 172:8 174:1 200:25,25 201:17 201:18,21,24 202:2,16 d d 1:15 6:8 46:9 218:5,20 dabbled 117:20 dad 122:1 209:4,8 209:9 dah 80:6,6,6 115:3 115:3,3,3 damaged 212:3 dan 113:4,11 dana 119:18,18,18 danger 199:23	dangerous 98:24 dangers 95:7 101:11 danny 112:13,14 data 181:4,8,12,24 182:2,8 date 8:5 13:22 18:24 24:10 34:21 36:12 47:15 55:19 56:14 57:14 60:2 63:19 67:5 70:10 92:22 116:5 148:11,21 149:23 150:10,19 151:21 152:6,14 184:25 218:10 dated 16:24 17:7 17:22 dates 72:11 daughter 122:2,10 122:25 126:2 209:5 daughter's 209:9 day 33:8 52:1,6 61:12 64:4 99:24 103:25 104:2 123:7,18 124:14 124:23 125:4,25 138:4 139:3,23 145:2,3 150:3 151:11,13 154:18 155:15 157:22 160:5 162:18 166:6,17,19 167:2 168:19 171:13 177:7 185:6 193:2 193:12 202:23 203:23 214:4,5 215:4 days 53:23 62:1 71:7,8 104:18
--	--	---	--

[days - documents]

Page 9

109:19 116:6 128:4 206:21 dci 52:16 deal 12:21 119:16 139:2 205:18 dealer 27:18 28:7 28:14 dealership 28:8 dealing 119:4 dealt 118:14 decide 70:5 decided 8:12 decision 59:18 decrease 100:15 101:3 defect 216:16 defendant 2:16 4:16 84:16 defendant's 7:21 8:3 18:21 19:10 54:17 55:16,22 56:10,12 57:11,12 59:23,25 60:4,19 63:17 70:7,21 75:17,18,19 76:6 77:8 84:25 86:3 92:16,18 94:1 148:4,8,18,22,25 149:18,24 150:13 150:16,21 151:10 152:2,7 190:18 199:1 213:20 219:3 220:3 defendants 1:9 2:10 degree 116:20,21 116:22 delete 12:15,16,19 13:5 deli 127:8	delivers 45:20 delivery 203:15 department 31:3 33:13 35:5,15,25 52:15,24 53:13 54:2 55:3 67:23 109:2 112:9 113:7 121:13 132:21 133:6,8,15 150:6 155:19 191:3,10 department's 34:4 departments 35:6 109:5 depending 99:13 depict 171:18 deponent 6:1 deposition 1:12 3:7,14 4:10,15,21 7:11,15 8:18 10:7 11:1,5 18:9 39:21 39:23 67:11 75:4 120:7,22 129:13 152:3,9 217:4 220:16 depressurize 177:13 describe 83:12 134:10,17 152:10 described 80:12 153:22 160:1 describing 154:17 description 219:4 220:4,21 design 22:25 24:1 26:19 50:12 designed 27:24 185:25 desk 151:5 detail 141:22 details 103:13 113:23	determine 193:21 determined 213:13 devalue 83:1 174:9 177:12 device 75:9,22 173:12,23 174:18 176:10 devices 85:20 111:11 154:13 diagram 152:2 220:15 dial 101:2 132:8 diaphragm 100:14 died 107:13 113:22 difference 27:18 27:20 61:10 different 28:1,4 69:8 76:8 77:18 78:15 79:20,21 91:8 94:21,22,24 100:5 101:1 120:19 137:23 138:2 171:6 difficult 68:8 113:20 209:7 dillon 46:9 114:25 115:19 214:25 dinner 108:11 124:17 direction 143:5 dirt 178:11 disagreement 105:24 disc 174:6 189:5 discharge 48:9 discharged 163:21 165:14 discretion 86:24 159:24	discuss 97:8 discussing 177:1 discussion 32:14 62:15 167:17 discussions 199:6 displaying 136:3 disregard 69:19 distinctly 171:6 distract 110:14 distracted 110:13 123:7 206:2 distraction 206:15 distributor 24:8 27:7,10,12,16,17 28:3,9,13,20 45:1 197:19 distributors 44:17 district 1:1,2 4:19 4:19 31:7,11 119:22 171:25 dive 35:18,23 diverging 36:20 division 67:17 dky 150:6 document 16:8,17 17:6,22 19:17,25 44:8 51:12 52:2 59:15 60:9 73:15 148:3 149:11 documentation 14:15 20:2 38:16 50:17 166:10 documentations 38:17 documents 13:17 13:25 14:6,22,23 15:21,25 18:4,22 19:6,8 22:15,19,20 22:24 23:7 29:22 30:10,19 33:2,3,4 36:21,23 37:25
---	---	---	---

38:1,12,15 39:12 39:13,14,25 43:18 43:24,25 44:1,7,13 49:24 50:10,21 52:3 54:17 60:5 60:20 63:9 69:6 73:8 147:23 219:6 doing 48:5 69:5 71:25 72:3 80:11 89:18,24 91:15,25 96:9 97:24 112:23 127:11 130:20 152:11 159:17 163:20 207:1 dollar 66:12 dollars 66:12,13 dominick 167:19 167:25 door 72:18 108:6 125:24 134:19 135:9,17 155:9 199:15 doors 127:15 132:17 doorways 152:16 dot 34:5 40:9,10 40:14,23 53:13,15 53:20,21 55:18 102:9,10,11 169:23 170:7 191:3,7,19,22 200:25 201:1,13 201:18,21,23 202:11,16,16 219:9 dot4bw225 192:7 double 167:12,12 doubt 119:5 draw 135:3 drawers 79:10	drawn 152:3 220:15 drew 152:11 drilling 145:10 drive 6:19 drops 159:6 drug 10:20 205:8 205:18 206:17 drugs 105:25 107:14,16,18 113:23,25 205:24 dry 80:21 95:22 due 167:14 206:5 209:7 duly 6:8 147:10 218:9 dump 81:18 duPLICATIVE 153:11 dust 108:16 132:1 156:8 duties 71:10 dwdltbw 102:10	ed 29:2 educational 116:11 edward 26:8 effect 3:16 67:5 effort 55:7 eight 94:24 118:22 134:24 140:16 198:16 either 29:23 32:2 40:15 43:18 45:12 64:17 80:6 81:18 82:5,5 88:8 89:16 96:13 109:24 120:11 125:12 126:9 140:5 144:25 154:13 162:5 175:7 181:21 182:6 189:10,10,17,17 214:4 electric 37:12,16 electrical 153:24 electrically 37:7 139:20 electricity 154:12 electrified 154:6 electronically 13:13 earlier 15:5 57:9 152:9 153:21 154:16 155:15 160:1,3,10 161:1 161:16 162:1,13 162:16 163:12,12 164:3,6 176:12 187:1 212:22 ease 78:2 east 167:9 easy 199:18	employed 62:1 218:15 employee 14:16 16:5,9 51:10 57:8 57:13,16 58:25 59:17 62:2 67:12 122:14 123:9,12 123:21 216:4 219:11 employee's 16:3 employees 13:18 58:3,17 63:23 106:12 114:12,15 120:25 169:22 209:20 employer 16:2 123:20 206:18 207:17 employers 214:25 employment 58:23 60:1,7,16 61:22,24 62:4 63:11,18 117:3 122:5 219:12,14 emptied 164:7 empty 163:6,7,10 163:13,16,19 164:5,17,25,25 165:2,8,22 166:2,7 166:15 ems 136:12 155:18 enclosed 59:1 ended 118:23 135:21 enforcement 168:3 engage 208:16 engaged 102:24 entered 152:17 entire 158:23
---	--	---	--

entrance 136:10	example 19:13 22:1 23:25 143:22 177:5	expected 213:10 expensive 159:20 204:4	extinguishers 16:23 41:1,8 71:14 74:4,7,10,16 75:1,8,23 76:14,20 76:22 77:14 79:8 80:12 83:16 89:20 93:9 95:3,22 99:20 101:8 126:15,18 127:1 128:11 130:6,16 136:19 144:20 145:14,21 169:12 169:24 170:12 181:3,10 202:9,10 204:6,17 216:13 extra 88:2
			f f 61:6,7 135:8 147:1 218:1 facilities 41:1 facility 16:22 34:5 35:11 40:11,17 41:10,19 42:5,18 191:8 201:5 fact 106:24 107:9 108:14 118:11 162:5 165:13 166:14 209:7 factory 184:19 200:8 facts 154:17 169:20 fair 43:16 153:19 153:20 154:8 164:7,23 171:22 fairweather 130:13,14 132:9 fallacy 174:9 familiar 164:20 181:1 192:9

familiarization	71:13	fentanyl	114:2 150:17 151:8,19	filled	33:9 35:22 44:3 49:20 50:15 62:10,21 80:5 84:22 109:20	finally	150:20 152:7
familiarize	27:21		213:24 214:9,20			financially	5:5
family	108:23		215:8,13 220:13			find	14:16 15:13 15:24 21:22 186:17,18 216:15
fan	132:18	field	23:16 52:24 115:21 158:11 202:3		128:18 130:25 133:15 137:13,19 138:8,15 140:3	findings	206:3
fantastic	157:16 187:10	fighting	216:7,12		142:8,13 160:3 161:7 172:8 177:8	fine	92:4 203:17 204:19
far	9:15 14:14 16:1 32:3 40:7 61:21,22 63:10 67:17 72:10 115:11 116:11 123:16 137:4 140:8 142:18 143:5 144:24 162:21 169:13 173:6 190:6 206:7	figured	161:9		179:9,23 188:15 189:17 190:11 192:21 204:2 206:12	fingers	21:11
faster	189:24	file	16:3,3 58:23 58:25 60:1,7,16,20 61:15,24 62:4 63:1,5,11,18 146:5 147:7 149:14 217:3 219:13,14	filling	13:19,20 15:3 17:10 19:23 20:8 30:13 33:5 34:3,13,16,24	finish	9:17 10:1 125:16 157:6 183:11
father	106:23 108:14 121:6,12	filled	4:18		35:10,12,14,24	finkelstein	1:14 2:3 4:22 5:12 62:13
father's	106:25	files	15:19 60:11		36:14 38:3,13,23	fire	1:13 2:16,17 2:18 4:18 5:16 15:1 16:5 17:16
fault	108:20 125:2	filings	3:6		39:17 40:2 42:3		18:6 22:22 23:1,8
faust	61:1	fill	34:6,8 36:4 37:8 45:10 47:21		47:15 48:17,21,22		23:16 25:6 26:6
fax	69:14,15,17		48:1,7 49:15		50:14 56:22 75:5		27:3 29:13 31:2,3
february	7:5 11:24 30:13 31:21 39:18 46:21 49:20 50:16 51:18 54:21 55:17 65:13 66:23 109:20 148:7,10 148:14 152:15 162:19 166:4 181:18 182:12 215:22 216:3 219:8,23		75:14 77:12,19 79:7,25,25 80:17 82:10 89:15 95:17 100:25 101:22 102:17 110:24 127:11 128:5,12 128:15 129:10 131:10 137:9,24 140:10,17 141:23 142:22,24,24 143:14 157:23 159:9 160:19 161:11 163:8 165:23 166:9		75:9 76:19 85:13 87:12 89:18 93:7 95:3,8 110:2 111:6 115:11 129:14,16 131:1 136:23 137:3 141:10 142:17,23 143:3,7,10,12 173:24 174:18 184:8 189:9 193:19 194:13,18 195:4 198:17 213:3		31:7,11 33:13 34:3,5 35:4,6,15 35:16,25 40:19 41:7,11 44:25 46:10,23 48:4 52:14,15,23 68:9 71:14 72:14 74:4 74:6,9,15 75:1,8 75:10,14,22 76:13 79:7,19 80:12,15 83:14,15 89:20 93:8,19 94:19,21 94:25 95:3,12,16 95:22 96:22 97:3
feedback	124:3		180:1 186:11	fills	138:14 159:12	filter	99:14,20 109:1,4,5
feel	10:7 98:16		188:3 193:5,7,21			filtered	112:9,9 113:7
feet	134:24		194:8,12 195:4				115:1 117:21
fell	206:14		203:3,21 204:15			final	118:20 119:22
female	88:12 89:6 94:16		204:16,18 206:8 212:24 213:13,17				126:15,17,25

[fire - full]

Page 13

127:8 128:11	fitting 87:5,11 88:6,15,19 95:1	forte 43:2 forth 160:18 205:17	103:11 105:24 123:8 125:12 126:1,4,24 127:11
130:16 132:21,23	fittings 89:10	found 60:24	128:3,11,14 130:7
132:24 133:6,8,15	five 78:4,21 139:7 140:15	122:18 150:24 151:8,11 212:10 214:5,9,21 215:8 216:20	130:17 134:22 135:8,20 136:18 137:22 144:16,21 145:13 148:6,9,15
136:19 137:21	fixed 172:5	foundation 175:3	148:20 149:6
140:6 143:12,12	flat 180:3	four 31:13 42:15 53:23 110:23	205:17,25 216:7 219:23 220:7
143:15 145:14,21	floor 76:21 134:1 134:23 136:17	111:2 112:21 134:21 138:9,22	frank's 74:14
155:18 158:8,10	139:8	140:10,13,15 144:10 170:19	franklin 1:4 4:17 5:10 60:24 71:5 72:8 80:10 102:22
158:14,18,23	florida 17:13	204:25	fresh 55:10,11 81:19
159:7,12,13	115:16 119:23	fourth 140:24	friday 125:18
160:12 161:19	122:3 138:7	foust 14:8,24	142:13,14 161:4
163:2,18 164:4	flow 85:22 86:23	16:20 17:9 22:21	166:8
168:19 169:11,24	87:20 109:8	23:14,23 24:14,24	friend 44:25
170:12 171:25	110:11,17 111:3,7	29:23 36:17 39:15	108:21 125:20
176:25 181:2	111:9,22 112:1	40:1,16,25 42:11	fromson 2:6 5:9
186:9 190:15	140:22 189:10	43:19 50:15 60:12	5:11,23 11:21
196:8,15,19	195:13,24 198:10	61:5 95:2,6 96:20	20:20 21:4 78:2,7
199:13 200:4	flowing 109:23	97:2,9 98:17	78:12,14,20 82:12
201:22 202:9,10	169:5	102:25 105:25	82:17,20 83:4,7
204:6,17 207:25	fly 122:18	107:2,11 121:4	86:14,25 87:3
208:1 211:1	focus 172:2	148:6,9,14,20	152:24 153:3,4,7
216:12	focusing 184:2	149:5 152:18	184:21 187:12,20
firefighter 118:18	follow 36:25 37:17	157:22 160:2,25	197:22 198:1
119:4	90:3 153:9	165:23 169:2,10	211:19 221:11
firehouse 119:7,11	following 145:4	169:22 170:10	front 88:6 108:12
fireman 68:9	158:22 219:25	182:18,25 183:13	132:22 136:24
firemen 198:8	follows 6:11	219:22 220:6	137:6,9 185:1
firm 4:25 5:11	147:11	foust's 58:23,25	full 85:11,11 109:9
181:1	foot 134:21 198:16	60:1,6,16 214:4	109:24 110:11
first 6:7,14 8:16	force 3:16 136:24	219:12	113:2 118:1 163:5
10:25 25:12 59:23	forces 124:9	fpc 26:6 29:7	163:6 165:6,7
70:12 73:22 80:18	forecasted 200:20	frank 29:24 43:11	169:8 176:13,15
81:8,11 87:10	foregoing 218:8	59:7 71:18 72:2	184:16 198:22
88:7 108:13	218:11	73:9,21 74:2 75:7	
109:19 117:2	forget 99:23		
121:3 125:7,10	forgot 61:12		
126:25 129:12	form 3:11 8:22		
132:16 140:17	193:10 211:20		
145:18 148:3,13			
156:11 177:20,25			
188:12 215:4,23			
215:25			

[function - grand]

Page 14

function	176:21 177:3,17	142:10 164:20,24 165:1 179:22	87:6 88:7 89:3,3,7 94:19 96:7,12	110:24 111:7 115:17 122:3
functional	174:22	205:2 212:18	101:6 105:10	130:25 132:4
funny	206:6	gears 93:9,17	115:24 116:12,15	133:18 135:1,9
furnace	127:21	general 160:4	116:23 125:14	139:6 140:21,21
further	3:9,13 130:3 147:11 187:20 218:14	generally 134:7 152:10 153:25 154:21 160:6 176:15	127:25 128:2 130:3,19 131:6,18 133:13 140:5,22 140:23,24 141:6	140:25 141:5 142:10 143:18 144:1 145:8,20 146:4 147:22
g				
g	103:22 105:16,17	gentleman 44:23 125:19 126:14 130:4 167:10	141:20 145:5,16 146:1 147:21	151:15 152:21,24 152:25 166:6
gages	138:1	gentleman's 26:8 127:4	152:21 159:10,23 168:7 172:11	172:11 174:24 177:11 178:16
gaining	211:15	georgia 117:7	173:8 177:8 178:4 180:1 184:1	183:23,25 184:1 187:15 188:1
gallon	186:21	getting 9:15 71:13 133:16 172:8	185:24 187:12 189:23 194:12	189:25 190:16 191:8,14 192:9
gas	79:24 94:7 95:8 101:12 118:15 125:19,23 159:12 204:8	ghost 132:14	195:3,20 199:14	193:12 194:8
gases	98:23 119:5	girl 103:9,20	199:24 205:7,23	197:22 200:2,17
gather	210:1	give 19:12 66:18 67:13 103:19 122:25 130:4,8 143:4 177:5 195:7	209:23 212:18	203:4 205:18,23
gauge	47:1,2 84:11 84:22,23 85:1,5,15 85:16 86:21 89:9 90:10 95:14 96:7 96:12,15 97:22 102:5,8,9 143:13 143:16,17,18,23 164:11,11 169:6 174:21 176:21,24 177:3,11,12,17,21 177:22,23 178:1 178:16 179:1,6 180:2,3,4,6,8,24 184:11,11,16 185:5,11,15,21,22 186:20 192:24 193:18,20 199:21 207:4 211:14,17 212:2,4,10,23 213:12,18	god 144:24	209:23 212:18	207:7 209:5
gauges	111:11 137:10,13,25	goes 34:10 45:18 47:9 72:20,22	215:16,17 217:2	gonna 46:4 96:9 122:8,9 195:25 196:2 212:7
		given 35:8 67:12 170:15 177:15 196:7	78:24 82:6 85:9 97:20 136:11,13 180:4 203:12	good 4:1 9:15,22 9:25 66:19,20
		giving 37:14,19 130:6	204:14 213:24	107:25 108:5
		glass 177:24	8:21 11:18 16:12	122:14,16 124:24
		go 4:13 5:21 7:21 8:16 11:2 15:10 15:16 18:3,16	18:3,7,15,19 33:24 36:22 39:5 42:17 52:1 53:5 55:21	124:25 136:4 147:4 153:5 178:1 187:25
		20:14,18 21:3,16 21:17 22:10 23:15 25:17 29:19 36:5 41:14 55:8,21 56:9 57:10 59:22 62:17,18 63:7 70:5 79:18 81:3,5 82:8 83:3 84:11 85:16 86:19 87:6	55:23 56:1,9 57:10 62:23 68:10 70:1 84:5,15 85:21 86:17,23 87:21 89:16 92:6 94:8 95:25 96:16 97:19,21 98:13 100:24 105:21 106:10,14 107:19	gotta 68:18 110:20 122:9 127:7,12 gotten 204:10 government's 156:16 grade 35:20 136:15 grand 2:15

great 78:12 124:20 124:20	123:21 219:11 handed 128:5 handing 16:23 75:16 86:2 handle 85:21 96:5 handled 109:2 198:9 handler 117:13 handling 101:12 119:21 hands 74:1 handwriting 149:1,4 214:16,19 215:23 handy 98:8 hanging 131:23 hanlon 2:23 4:24 happen 76:22 97:20,24 100:6 128:22 140:21 166:6 199:8 200:10,21 happened 12:21 21:19 52:6 67:18 76:20 104:9,22 112:22 114:11 121:21 124:14 125:9 129:22 132:11 137:21 144:19,22 151:4 152:14,18 155:2 160:14 203:23,24 205:13,19,21 happening 65:10 96:11 97:23 200:17 happens 89:17 131:20 206:12 happy 10:10 hard 46:4	harder 111:17 hardy 2:14 hartford 64:1,22 64:23 150:5 hat 119:12,12 hawkins 114:19 114:23,24 214:25 hazard 17:17,20 he'll 74:18,21 head 28:1 47:24 48:4 79:18 81:13 81:17,17 83:2,14 94:20 146:1 153:15 hear 103:6,11 105:6,18,22 106:7 106:11,12,24 107:8 109:8,18,22 109:23 111:3,7,11 111:22 113:1,2,21 127:20,21 131:19 132:1 198:10,22 heard 103:7,8 104:25 105:7,22 106:1,5,13 109:7 112:2 113:22 132:4 133:13 155:5,5,10 156:3 180:7,16,17 198:9 215:17 hearing 103:2,18 106:7 110:16 hearsay 103:4 heat 113:2 126:7 131:7 heat's 127:18 heater 109:21 110:15 113:2 207:2,3 heiser 26:11,23 27:5,6,7,9 28:5	held 1:14 4:21 32:14 62:15 93:24 167:17 helicopter 133:2 helicopter's 122:17,20 hell 133:10 154:20 154:25 155:20,24 156:1,10 help 189:23 helped 57:24 henry 130:11,12 132:9 133:4 hercules 117:13 117:25 hereto 3:5 hesitant 37:14 hey 45:7 121:16 124:25 155:11 high 95:13 116:12 116:13 174:1,4 202:22 higher 80:7,8 137:17,18 hired 123:14 history 116:12 hit 111:12 195:5 hits 84:14 195:19 195:23,25 hoarse 153:8 hobby 117:21 hold 78:8,20 81:15 82:13,17 86:14 88:22,25 98:2 108:17 129:5,5,5 157:5 183:10 holding 82:14 holds 79:4 holes 188:3 hollering 132:2 155:11
h			
h 219:1 220:1 habit 9:21 half 12:18 54:23 83:17,19 87:19,19 163:6,6 hammering 145:11 hamper 10:22 hand 13:25 15:20 59:22 60:14 84:15 147:22 209:19 handbook 14:17 16:5,9 17:18,19 57:8,13,16 58:1,18			

home 6:17	hydrostatic	55:17 56:23 63:22	89:3,4,5,6,6 90:13
hometown 66:14	169:23 170:12	63:24 66:23 67:13	135:14,16,16,18
66:21	hydrotest 40:25	67:15 71:6 92:15	135:19,20,21,22
honest 42:14	41:11 77:16,18	92:21 93:2 102:24	135:24 136:9,10
121:5 201:16	170:6 200:24	120:11 124:14	136:13,15,16,18
205:14 206:18	hydrotested 50:7	139:14 150:12	136:20,23,25
hook 79:18 83:13	50:8	152:4,14,17	137:20 159:22
83:21 88:8,9 89:7	hydrotesting	161:23 163:10	186:12 198:5
94:17 140:10	13:21 39:16 40:1	188:16,18 193:3	202:20
156:5	40:12,17 41:19,23	193:11 200:14	indication 185:20
hooked 37:6,10,11	43:20 74:3 77:5,7	203:23,25 213:11	individual 170:2
138:6 139:20,23	i	214:5 215:7,18	individuals 165:18
140:2 153:23	idea 69:21	219:8,21 220:17	169:21
hookup 79:21	identical 27:23	incidents 64:10	industrial 35:6,17
hopper 79:4	162:25	inclined 98:9	36:1,2 57:25
horsepower 139:7	identification 8:4	122:17	industries 2:10
hose 75:13 89:11	18:23 55:19 56:14	include 16:1	industry 25:24
131:10 158:2	57:14 60:2 63:19	included 16:2	35:13 68:7,23
198:17	70:10 92:22	including 14:25	91:7 158:13
hospital 108:3,9	147:25 148:11,21	22:23 101:15	170:15 171:2,5
124:16	149:22 150:18	150:5 170:20	177:16 181:2
hour 151:20	152:5 184:24	181:11 214:22	186:13 196:18
hours 103:25	identify 55:25	215:9	205:12
104:1 122:12	92:24 148:12,25	increase 100:16	information 51:6
123:4,19 151:14	illegal 107:16,18	101:5	52:4 54:1 59:17
207:19	113:23	increased 111:25	62:21 69:9,24
house 14:9 207:13	immediately 46:20	186:2,2,5	92:20 93:1 99:8
howells 31:6,7,11	131:1	independent	170:4 207:21
33:13 118:23	important 9:17	160:24	219:20
huh 11:10,11	129:21	index 221:1	inherent 95:7
205:14	inch 83:17,19	indicate 184:16	101:12
hum 33:14 39:20	87:19,19	indicated 154:3,19	initial 6:15 82:24
110:3 114:9	inches 136:17	165:4 169:7,19	inquiry 14:5
134:13 145:15	incident 7:4,6 12:8	218:10	inspect 74:6,18
161:17 193:13	13:22 15:1 22:22	indicating 35:13	180:2,24
humor 124:20,24	31:21 33:8 34:12	48:15 59:5 69:11	inspected 72:17
hung 155:6	34:21 36:13 41:18	75:24 79:9,12,14	126:18 179:22,25
hurt 97:11 165:18	41:22 44:4 46:20	80:24 82:9 83:11	inspection 69:9
husband 25:23	47:7 50:12 51:10	87:17,20,21,22,23	180:9,19 185:17
hydro 77:22 177:7	51:14,16,17 52:9	87:24,25 88:1,2,3	inspector 127:9
	52:24 54:3,20	88:9,10,10,21 89:2	159:8,13 167:3,10

168:3,4 inspectors 158:18 158:18 200:5 installation 22:25 24:2 50:13 installed 158:20 158:24 instance 207:24 instruct 180:23 instructed 172:7 174:17 175:10 instruction 173:7 insurance 63:21 64:2,8,14,16,23,24 65:4,6,9,15 66:4,6 66:14,21 150:7 intact 177:22 integrated 37:7 integrity 77:4 intent 110:17 interested 5:5 190:19 interfere 4:9 interference 4:6 interject 129:23 interrupt 210:18 intricated 68:16 introduce 5:22 introduced 123:24 inventory 46:18 186:15 investigated 12:7 169:21 investigation 52:18 156:16 157:19 involved 67:21 69:8 76:10 139:11 149:21 150:5,11 161:22 181:25 208:4 220:11	issue 101:16 210:15 issued 7:10 issues 121:25 124:3 157:19 item 13:17 86:4 172:12 items 11:3 19:4 20:18 21:24 22:8 22:12 33:15 57:9	keep 16:2 24:7 29:9 80:21 140:25 141:2 151:6 153:13 207:20 209:19 keeps 195:14 ken 153:7 kenneth 2:6 5:10 kept 149:20 150:10 220:9 kevin 114:17 115:14 keys 150:25 214:3 215:3 kfromson 2:6 kid 122:16 kidde 26:17 kids 117:23 kimberly 103:21 104:4 106:2 114:5 216:4,4 kind 36:20 38:6 43:14 68:24 70:5 72:24 74:25 85:2 113:25 115:23 jobs 117:14 joe 68:9 john 116:13 joint 55:7 joke 132:3 200:1 july 17:7,9,23 138:21 jump 9:23 188:1,1 juris 158:16 jurisdiction 159:25 jurisdictions 158:17	15:14,15 20:2,9,25 22:2 26:3,12 32:17 43:3,3,8 49:18 50:2 52:9 53:8 55:20 57:2 58:8 61:16 65:2 65:20,22 68:6,11 68:14,17,22 69:18 71:3,13,21 72:10 72:11,14 73:7 80:4 86:7 90:11 98:12,14,16,23 99:2 103:1,7,13,14 106:2,4,17 107:13 108:5 111:4 112:10,16,19,19 113:16,17,17,20 115:14 116:2 117:20,22,23 119:25 120:3,4,13 121:3 122:19 123:8,19 125:24 126:9 132:12,15 132:20 133:25 141:24 143:6 145:2 149:2,3 153:18 159:15 163:19 165:11,12 165:20 166:4,5 167:1,5 170:2 176:13 177:22 179:21 190:6 kitchens 28:2 knees 137:17 knew 97:2 98:11 98:17 106:20 120:8,8 121:5 133:1 170:8 knight 160:12 know 7:23 9:18 12:23 13:24 14:16
	k	kansas 2:15	knowing 96:25 138:7 192:18

knowledge 20:12 20:13,25 24:13,16 24:20 26:14 47:17 47:19 50:7 77:11 98:19 170:16 177:15 190:9 196:17 215:14 knowledgeable 98:15 143:9 known 121:14 207:4 213:16 knows 128:21 I	202:13 law 5:11 lawampm.com 2:6 lawn 121:11 lawns 121:13 lawsuit 120:12 lawyers 150:8 laying 109:13 134:1 layman's 68:14 layout 16:21 152:4 152:13 220:17 leading 36:22 89:10 leak 82:2,2 learn 192:13 learned 207:25 209:15 leave 163:23 166:7 led 51:25 158:4 ledger 150:9 left 44:21 79:14 138:7 144:10 145:22 155:17 166:3 190:20 leg 124:22 132:25 155:12,12 legal 8:8 186:12 legs 132:2,2,3 155:12 length 94:12 134:21 lengthy 67:19 letter 16:18 53:13 55:2,18 60:11 61:10 62:14 70:8 70:14 219:9,16 letters 15:17 60:13 70:9,20 219:17 letting 199:24	liability 63:24 64:12,15 66:3,5 liberty 65:16,17 license 40:14 122:20 201:7 licensed 40:24 lie 113:11 128:9 lieu 208:2 life 124:25 lights 131:7 limit 65:1 limitation 97:16 limited 11:24 97:16 limits 98:14 line 20:21 86:18 89:7,15 94:11 100:3,24 123:6 137:21 158:2 176:24 180:3 184:9 196:1 206:4 lines 83:10 103:16 111:10 118:24 141:11 liquid 25:16 27:25 45:13,21 80:22 81:19,20,23 83:1 158:25 159:19 178:14 179:14 186:3,7,22 list 11:3 20:18 122:23 172:12 192:19 208:23 209:18 210:2,3 listed 56:21 148:4 192:13 listen 169:4 literally 153:23 little 9:10 20:15 37:14 48:11 60:23 86:19 93:6,10,18	102:14 116:3 120:19 123:1 178:2 194:6 200:3 211:14 215:15 live 103:23 125:16 lived 116:10 llp 1:14 2:3,8,14 lms 1:3 local 52:15 112:18 112:18 127:8 locate 53:7 located 4:22 46:11 location 6:24 17:13 77:1,15 138:22 locations 75:5 long 68:20 69:5 71:3,5 81:14 longer 22:14 162:3 look 12:15 13:6 15:10,23 37:3 53:6 60:3 70:18 75:20 76:16 81:11 84:21 85:6,8 86:5 90:2,9 97:2 101:24 137:15 143:5 149:12 166:24 193:20 206:3,19,22 212:23 213:21 214:17 looked 46:19 68:18 134:11 156:6 213:11 looking 31:24 53:25 54:9 60:10 84:25 96:22 101:21 121:17 150:25 190:19 205:5 214:3 215:3
--	---	--	---

[looks - mind]

Page 19

looks 16:7,18,23 51:18,22 53:17 56:15 57:15 60:13	maintain 180:23 maintenance 170:23 180:9,19	92:16 184:21 marked 8:4 18:23 19:9 39:19 55:18	158:14 181:7 191:6 194:21 210:18
loop 39:6	major 117:2	56:13 57:13 60:2	means 110:25
loose 48:19 133:11 154:21,25 155:20 155:25 156:1	making 72:12 154:21	60:4 63:18 70:10 75:17 84:16 92:21	199:20
lose 189:4	male 88:11 89:5 94:17,18 189:1	99:4 147:23 148:10,20 149:22	meant 193:16 194:1
lost 124:21 155:11	malfunction 127:21	150:18 152:5 184:24 190:17	mechanical 122:16
lot 9:19 15:15 69:7 82:24 104:8 134:12 136:11 191:9 192:10 209:13	man 114:18 206:7 206:23	marked's 86:3	mechanically 98:9
loud 131:20 133:13	management 116:22	marker 135:10	mechanics 206:8
loved 108:21,22	manual 20:6,7,7 24:1,25 25:16 37:15,19	marking 63:15	media 4:14 63:1,5 146:5 147:7 217:3
low 40:20 41:2,4 71:16 76:18,19,23 76:25 169:23 170:7,24 178:17 200:24 201:11,12 201:13,19,20,24 202:11,15 203:15 204:14,22	manuals 21:5,21 22:14 24:7,9,11,15 24:21 25:6,10,13 29:16,20 31:14 50:10,25 51:1,2,5 172:18 175:17	markings 44:18 45:4 191:20	medical 61:17
lowers 140:18	manufactured 191:9	married 117:22	medication 10:20 10:21
lp 4:18	manufacturer 27:8 91:9 162:21 174:5 191:21,22 192:3,11	maryland 26:8	meets 28:2
lubricants 173:2 176:1	manufacturer's 175:17 192:19	match 188:17	member 31:9
m		material 26:18 122:24	mention 215:12
m 103:22 105:16	materials 117:13 172:24 175:23	materials 117:13	mentioned 53:4 66:3 207:10 208:22
m4543 192:8	matter 4:17 108:14 118:11	matter 4:17	messed 18:16
ma'am 24:12 61:25 73:2 102:21	manufactured 191:9	matters 8:17	messrs 169:2
machine 76:19,25 117:11 204:9 207:5	manufacturer 27:8 91:9 162:21 174:5 191:21,22 192:3,11	max 96:9 168:16	messy 159:21
magic 135:10	manufacturer's 175:17 192:19	maximum 41:8 84:8 95:24 96:2 96:10,17,17,19 168:9	microphones 4:4,9
main 31:14 155:8 188:10	manufacturers 26:16,19	mcneil 66:17	mid 202:13
	manufacturing 172:18 192:5	mean 14:20 15:16 24:17 41:3 42:14 47:8 54:12 57:4	middle 6:14,15 86:6 113:8 137:1
	march 53:13	66:9 67:9 68:21	middletown 6:20 7:2 31:5 113:9 116:10 167:8
	marinette 28:22	73:13 76:12 96:17	mike 147:18,21 210:17
	mark 7:14,21 54:16 55:8,21	106:16 109:13	milligrams 151:20 214:21 215:8
	56:10 57:11 59:23	110:10 112:4	million 66:12,12 66:13
	63:8 70:2,20	115:15 122:12	mind 60:22 78:3 171:14 175:4
		123:4 124:23	
		154:24 155:16	

minds 55:12	mornings 104:22	163:17,24 166:8	newer 201:18
mine 11:19 125:20	motor 139:7	181:23 182:2	nfpa 26:3
149:3	move 117:23,23	needed 35:7 97:2	<bnick< b=""> 167:11</bnick<>
minimum 32:1	150:25 151:7,15	122:12 125:22	night 108:15
minute 7:15 18:17	196:2 214:3	166:21 203:12	122:24
minutes 92:2	moved 17:1,2,3	needle 177:23,24	nine 96:6 105:4
116:1 125:17	32:2 42:16 58:5,8	needs 74:19 99:2	140:16
141:19 144:10	122:21 147:14	negative 185:8	nipple 83:20 87:20
missouri 2:15	194:24	neither 154:9	87:23
mistake 59:8	moves 141:13	170:10 183:7,13	nitpickers 200:5
misunderstood	moving 132:19	nels 126:11	nitrogen 75:2,11
155:14	138:8	nelson 126:12,13	75:23 76:14 79:15
molineaux 2:11	mow 121:13	130:5 145:23	79:19,22,25 82:10
5:13,14 8:1	mowing 121:11	network 12:24	83:10,23 85:25
187:24 197:25	multiple 162:10	never 20:10,11	86:12 89:16 90:7
198:6 205:5 210:7	204:25 205:1	35:22 39:7 50:8	90:17 91:4 93:20
221:12	multitude 177:19	53:3 77:22 106:1	95:14 96:8 99:12
moment 62:18	mutual 65:6,6,6	106:4,6 128:14	177:11 194:14
78:9 168:8 187:13	65:15,16,17	130:23 136:4	203:13,15 204:4
monday 75:4	n	138:6,6,16,20	204:14,21,22
145:4	n 2:1,9,22 3:1 6:7	139:11,20 140:2	nod 153:15
money 205:25	6:15 7:1 46:9	141:13 142:14,14	nodding 32:13
month 12:18,18	147:1,1,1,9 218:1	145:18,24 179:14	89:12 93:14
107:15 148:15	name 4:24 5:10	179:14,15 190:3	noise 131:20
192:4 202:17	6:14,16 26:8 46:8	193:5 194:1	133:13
months 42:15	49:13 61:1 103:19	200:16,20,21,21	non 40:23,23
107:20 112:21	105:12 106:25	new 1:2,15,16 2:4	202:8,11
mop 117:4	130:4,8 153:7	2:9 4:20,23 6:9,20	normal 9:19 91:6
morning 4:1 37:5	167:1,10	7:2 16:22 17:5	123:20
52:19 67:15 99:18	named 115:6	31:6,8 46:12 58:5	normally 212:17
103:3 104:13,15	napanoch 46:12	66:15,17 67:16,23	notary 1:16 3:15
104:21 109:18	nature 69:1	68:23 74:20,22	6:9 218:7,21
122:8 125:12,18	navy 57:25	103:24 119:23	note 4:3 214:18,20
126:2 129:14	need 10:7,15 32:23	122:3,21 126:17	notebook 149:19
130:25 134:6	45:7,8,22 47:20,25	126:25 138:7,8	150:1,2 214:13
141:22 144:14,17	48:1,6,9,20 52:10	141:6 145:20	220:8
145:13 161:4,6	70:6 74:20 92:1	167:8 185:18	notes 7:24 51:8,21
163:9 166:8	96:1 116:23	200:8 208:10	52:3 115:24
167:15 204:12	126:15 127:9	218:21,22	148:19,23 149:1
205:19 206:11	138:12 161:7	newburgh 1:15	149:19 150:2
213:10 216:5,7	162:10,13 163:13	4:23	205:6 214:13

218:13 220:6,9 nothing's 97:23 notice 88:11 notifications 156:24 157:18 notified 132:23 november 16:24 17:4 nozzle 159:5 nozzles 159:5 nsr 1:3 number 11:22 19:6 22:19,20,20 30:7,9 33:3 37:2 37:25 39:11,11,14 40:5,8 49:23 50:9 51:8 54:13 56:15 56:16 58:22 63:11 63:20 64:3 69:23 70:19 76:18 78:19 82:15 102:11 114:18 143:19 149:5,6 191:9 192:1,10 numbers 52:9 53:9 54:14 66:18 149:7,8,9 190:20 190:24 192:7 nutshell 68:25	obstruction 178:5 178:8,8,10,12 179:1,5,10,16 obtain 28:11 occasion 42:23 71:21 103:11 occasionally 115:23 211:2 occupancy 167:24 occur 7:6 64:10 occurred 7:4 11:24 12:1 13:11 51:11 152:5 220:18 office 122:4 125:17,18 127:12 127:14 131:19 133:3 136:14 154:20 155:1,20 205:21 214:21 216:5,9 officer 107:7 168:4 offices 1:14 official 156:18 oh 59:8 62:11 65:5 87:8 98:1 108:12 109:15 112:5,24 112:25 113:1,17 118:19 121:9 122:15 128:24 129:1 144:7,24 182:22 190:21 195:15 okay 7:20 9:14 10:3,11,18 11:6,20 12:13 14:1,21,21 15:22 16:13 21:17 21:23 23:6 27:19 30:23 35:1,1 36:24 40:21 41:3	44:5,11 46:3 49:16 54:5,24 55:8 56:5,8 57:3 59:3 61:3,8 67:1 70:22 76:9,11 81:22 83:12 85:18 87:16 88:5 89:8 90:9 91:21 92:3,5 94:3 103:5 110:23 111:3 114:3,3 115:9,11 118:8 119:3 120:8,18 121:9 122:7 125:15 126:6,20 126:23 127:24 128:23 129:12 131:16 135:20,24 136:8 140:18 148:2 153:6,11,12 153:16,21 156:14 157:11 159:3 165:18,19 166:21 172:13 183:24 184:20 188:22,23 188:24 189:2 190:1,16 191:1,13 191:24 192:12,18 195:16 196:4,5 197:21 201:6,15 202:21 207:23 208:19,22 210:6 214:12,14 216:25 old 17:12 122:2,4 138:21 162:2 206:7 208:9 older 57:23 once 18:14 31:25 32:1 46:5 69:25 95:23 99:21 100:4 141:17 145:5 194:23 195:5,25	ones 126:17 179:18 201:18 online 207:10 208:16 open 24:18 86:19 109:17 125:21 137:1 140:17 189:6 opened 109:8,23 110:11 132:16,17 198:10,14,23 opening 60:25 operating 161:14 operation 19:21 25:17 30:12 38:2 68:12,15 110:2 123:19 operations 35:18 operator 117:11 opinion 205:15 206:18 opposed 153:14 oprandy's 1:13 6:22,25 7:4 13:18 16:5 17:16 18:6 19:7 38:3 51:9 56:21 58:23 61:24 63:21,23 64:11 67:12 70:8,12 71:6,9 72:3 74:3 75:7 102:23 117:19,20 118:12 158:8 161:19 163:2,18 164:4 168:19 171:24 181:17 219:15 orange 116:16 order 9:24 81:13 95:15 143:14 orifice 178:2
o o 2:22 3:1 6:7,16 7:1,1 46:9 61:6 114:17 147:1,1,1,9 218:1 o'brien 26:9 29:2 objection 193:10 211:19 objections 3:10 observed 177:2 obst 179:3	122:15 128:24 129:1 144:7,24 182:22 190:21 195:15 okay 7:20 9:14 10:3,11,18 11:6,20 12:13 14:1,21,21 15:22 16:13 21:17 21:23 23:6 27:19 30:23 35:1,1 36:24 40:21 41:3	190:1,16 191:1,13 191:24 192:12,18 195:16 196:4,5 197:21 201:6,15 202:21 207:23 208:19,22 210:6 214:12,14 216:25 old 17:12 122:2,4 138:21 162:2 206:7 208:9 older 57:23 once 18:14 31:25 32:1 46:5 69:25 95:23 99:21 100:4 141:17 145:5 194:23 195:5,25	158:8 161:19 163:2,18 164:4 168:19 171:24 181:17 219:15 orange 116:16 order 9:24 81:13 95:15 143:14 orifice 178:2

[original - photograph]

Page 22

original 52:13	owner's 20:6	49:10,11 50:19	patty's 114:19
originally 178:12	owners 6:21	60:18,20 87:17	215:1
190:12	P	95:5 98:10 104:15	pause 18:25
osh 51:13	p 2:1,1,22 3:1	117:21 118:4	paw 83:19
osha 12:7 21:10,22	135:4	143:25 144:1	paying 199:19
22:13 26:2 37:5	p.m. 147:2	169:21 178:1	payroll 59:2
37:14 51:14,15,16	p.s.i. 41:6,8 80:4,7	180:9,18 188:11	123:22
51:19 52:21,22	80:9 95:24 96:22	213:1,12	pchoo 111:13
67:24 68:21 70:9	162:17 168:11	particular 50:18	penalties 157:3,18
70:14 138:18	173:9 184:17	75:8,9 79:17	penalty 9:3
139:4 156:15	186:7 187:5	103:13 125:25	pending 10:16
169:19,20 170:3,8	194:15,18,22,23	166:13 181:16	penmanship 215:2
170:10,13 171:17	pacific 117:7	191:11 197:2	pennings 214:24
181:13 185:16	pack 34:25 143:1	204:12	people 25:24
190:21,22 206:3	package 139:2	particularly	106:20 206:13
207:9 212:9	packaging 72:18	190:19	207:23 214:24
216:14 219:16	packs 34:3 35:3,3	particulars 124:19	percent 95:21
outcome 5:5	page 70:12 219:4	parties 1:13 3:5	perform 158:20
outlet 153:24	219:25 220:4,21	4:13 149:21 150:4	159:23 170:12
outlook 124:20,25	221:9	150:11 152:12	performed 169:22
outside 25:22	pages 18:5 19:9	185:16 220:11	performing 160:5
26:15,20,21 48:16	92:13,15,19,25	partners 1:14 2:3	perjury 9:3
106:13,18 126:21	219:18	4:22 5:12	person 10:1 64:3
132:9 213:22	paid 122:11	parts 25:16,16	110:1 119:19
outsider 68:7	123:21	28:4,11 77:19	128:20
overcharged	paint 197:8	79:11 80:25	person's 118:5
199:15	painted 196:20	party 5:4 218:15	personally 106:4
overpressurization	197:13	pass 152:22	personnel 16:3
172:15 206:4	panel 139:9	passed 107:11	pertained 181:15
overpressurize	paper 19:17 117:7	pat 54:24 55:5	pertaining 184:8
173:8 175:13	178:3	61:16	pertains 175:1
199:14	paperwork 52:7	patch 213:24	179:17
overpressurized	72:23 126:22	214:9,20 215:8	pfw 117:13
97:10,15 199:7,12	paraphrase	patty 2:24 5:22,24	ph 67:22 102:10
199:18,24 200:2	194:11	15:14 54:25 55:1	111:13
200:15 216:20	paraphrasing	56:5 59:11 62:5	phone 12:11 66:18
overseeing 71:21	154:4	92:12 103:10,14	115:7 127:13,19
owned 117:19	parking 104:8	108:2 114:8	155:3,4,6 156:5,5
owner 6:23 71:22	136:11	149:12,20 150:3	photo 136:3
207:15	part 19:19 35:13	215:1,25 216:8	photograph
	37:7 46:17 47:9	220:9	184:24 220:22

photographs	plus	position	prescriptions
11:22 12:2,5,6	13:6 69:4 80:20	142:11 152:15 199:17	151:8
13:10 75:5,20	pneumatic	201:9 208:15	present 1:13 6:17 6:23,24 208:20
76:6 171:17	81:15	possessed 20:23	preserve 187:8
photos	pocket	possession 13:12 24:6 25:5,11 33:1	press 49:6
11:25 12:9	214:23 215:7,10	33:4,7 50:11 53:2	pressing 48:23
12:10	point	70:16 181:18 182:10 187:2	pressure 40:20
physically	54:16 70:4	211:15,24 212:6	41:2,4,7,9 47:2
pick	88:25 97:17 136:6	possible 179:8 211:16	71:16 76:18,19,23 76:25 77:4 84:3,5
picked	154:19 164:6	possibly 18:13	84:6,9 95:13,15,21
picture	211:17 212:2	potentially 166:24	97:3 98:3 99:4,11
79:2 86:6	214:8	pound 140:3 185:10 186:7,20	99:13,21 100:3,6
87:4 88:6 138:19	police	pounding 147:15 147:19	101:22 142:22
171:13 175:4	12:22 67:17 107:6,7 121:12	pounds 41:5 76:24	143:6,20 144:4,6
185:5 206:23	policies	80:7 95:17,18,19	162:20 164:11,20
pictures	67:4	95:20,21,25 96:1,8	164:23 165:12
13:3	policy	99:22,22 138:9	168:9 169:6,23
44:21 133:20	65:1 66:15 66:22 67:4	140:19,20 143:1,1	170:7,24 173:5,12
159:14	policyholders	144:3,8 174:7,8	173:18,23 174:1,4
piece	65:18	177:10 186:16,22	174:17,21 176:4
19:16 48:6	pone	195:5,6	176:10,20,24
48:11 83:18,19	131:22	pour 81:23 83:1	177:2,10,17
pilot	pop	powder 79:5	180:24 184:11,16
122:18	117:4	134:14,15 155:9	185:5,15 186:23
pine	port	156:7 179:15	192:14,20 193:5,7
103:24	83:16,17	powder's 96:14	193:17,21 194:3
pinpoint	87:19 100:22	power 126:9	194:15 195:8,9
106:15	portable	preliminary 8:17	200:3,11,24
pipe	158:9	premises 64:11	201:11,12,13,19
83:19,19	204:5	207:20	201:20,24 202:11
pizzeria	portables	prepare 56:6	202:15,22 212:11
167:9	201:24	prepared 54:22,22	212:24 213:14,17
place	202:11	55:5 57:16	pressures 72:12
4:8,12	portion	prescription 10:21	98:11 99:3 186:5
106:15 121:14	49:19	150:17 151:19	pressurization
133:19 145:18	poseidon	213:23 220:13	172:7 175:11
plain	1:7		pressurize 75:15
68:10	14:11 19:14,19		80:24 83:9,13
plaintiff	21:6,9,14,15 22:17		95:23
1:5 2:5	30:12 31:8,16,19		
5:9 22:21 23:3	33:5 34:14,18		
24:20 39:16 43:19	37:21 76:13 90:19		
plaintiff's	90:23 100:18		
63:10	119:10,17 134:7		
63:18 152:23	135:5,15,22 136:6		
184:23 219:14	137:4,4,6 138:19		
220:20	138:25 139:10		
plant	158:3 168:10,18		
117:8	213:3		
please			
4:3,7 5:7			
9:12 10:9 187:8			
216:25			
plugged			
154:10			
plumber			
112:18			

pressurized 82:7 95:13 96:3 98:21	problems 124:3 procedure 14:9,10 14:11 17:11 72:11 77:17 96:4 100:4 128:19 142:9,22 161:14 177:9 203:21 204:20 206:9 213:2,8,12 procedures 16:19 16:21 17:5 18:23 71:15,18 123:16 205:3 219:7 proceed 6:5 147:21 process 34:10 72:23 93:18 199:21 produce 11:4 14:22 73:16 produced 51:13 56:2 63:10 70:2 producing 30:6 60:6 product 20:6 158:9 162:4 165:16 products 2:16,17 4:18 5:16 27:3 29:13 professional 1:15 218:6 program 18:7 progress 141:12 projection 137:18 prompt 123:22 prompted 7:17 pronunciation 61:9 proper 43:4 142:21,22 213:7 213:13	properly 17:10 176:21 177:3,18 212:11 protection 26:7 protex 23:25 24:3 24:8,14,21 25:14 26:11,23 27:5,7,9 27:22,24 28:3 29:21 41:23 42:3 42:12 protocol 123:18 161:13 prove 166:22 provide 181:11 provided 54:2 92:12 185:15 208:23 210:2 provides 63:22 65:21 providing 153:14 pshwew 12:17 65:2 pshwoot 198:22 public 1:16 3:15 6:9 218:7,21 pull 14:3 159:11 159:11 pulled 104:8 punched 126:5 purchase 21:15 30:11,20 38:1,13 38:18 44:2 46:14 46:17 49:24 50:19 115:2 126:19 139:1 190:13,15 purchased 17:2 21:14 33:12,19 34:20 36:11 38:22 39:9 44:24 46:1 46:22,23 50:4 66:2 90:24 138:24	196:14 210:14,15 210:16,22,23 211:7 purchasing 33:24 45:5 purpose 33:23 pursuant 1:14 7:9 push 49:1 189:5,7 189:8,12,20 pushed 136:25 pushing 49:2 188:5,7 put 16:14,16 18:3 18:7 21:11 34:15 48:24 51:19 52:5 54:5 68:24 70:24 72:13 73:12 74:21 81:14,19,24,25 88:13 92:25 95:18 96:8 97:18 99:21 100:9 102:20 107:9 111:18 115:16 121:18,20 133:2 135:4,5,6 137:8 140:14 147:17 159:6 160:20 163:23 174:7,8 177:9 195:5 199:18 200:3 204:5,9 206:21 214:15 putting 18:14 72:12 77:3 pyr 28:4 pyro 24:23,25 25:6,11,13,20,21 27:16,22,23,25 28:5,12,13,23 29:14,21 41:20 44:16,16 45:1,2,14 50:22,24 81:6
---	--	---	---

85:13 162:3 181:11,22 182:18 182:25 183:5,14 183:22 184:19 185:25 186:6,19 196:16,24,25 197:1,5,19,20	113:4,5 114:17 147:1,9 218:1 racks 135:19 136:19 raise 216:10 ran 132:7,7 138:20 138:21 140:4 randy 107:1 121:12 rate 123:20 rated 97:4 reach 70:23 read 11:8 60:10 68:17 103:16 190:22 215:19,20 reading 164:16 177:12,12 ready 11:8 real 46:4 53:6 90:2 90:3 159:19 203:18 realize 98:7 realizing 36:25 really 10:13 14:10 32:4 49:1,9 116:8 124:17,18,19 211:9 realtime 1:16 218:7 reason 10:8 11:13 30:1 37:13 113:10 113:19 119:13 129:22 160:15 189:3 204:6 reasons 177:16 rebuild 74:10 80:23 82:4 rebuilt 50:3,5 74:19 79:13 83:2 190:3 211:6,10	rec 144:24 recall 42:13,24 43:5,10 77:25 115:15 153:24 154:21 156:19 160:6 167:4 receive 157:17 received 7:17 14:2 14:25 16:4,8 39:16 123:21 149:11 150:22 170:3 receiver 131:22 recess 63:2 92:8 146:6 187:17 recharge 43:11 74:12,23,24 75:7 79:16,16 80:15 81:6 83:21 90:17 172:24 175:23 recharged 126:16 recharging 42:8,9 42:10,12,19 43:1 43:20 51:6 71:16 81:1 89:22,24 91:16 93:8 94:5 170:23 171:7 recognize 193:4 recollection 144:25 160:24 161:3 197:15 record 4:2,13 5:8 9:15,25 18:17,20 19:2 29:10 32:15 32:23 62:3,16,18 62:23 63:4 72:1 92:6,10 119:13 121:7 139:19 140:1 146:4 147:5 148:1 167:18 187:13,16,19	217:2 recorded 1:12 4:15 recording 4:11 records 19:6 33:6 39:2,3,4 59:2 61:17 149:16 166:25 rectangle 135:3 red 44:20 171:18 171:18 196:9,13 196:20 197:5 redone 67:20 68:3 redundant 30:9 reed 67:22 reexamination 210:13 refamiliarized 16:20 reference 78:3 154:25 178:7 referenced 155:24 174:12 referencing 168:17 referring 145:10 refill 75:10,22 76:13 refilling 42:4,10 43:21 50:14 93:11 93:11,19 reflects 185:14 reg 86:21 202:16 regarding 14:5 19:4 22:24 24:25 25:11 29:13 39:16 39:25 40:1 43:19 49:24 50:12 51:10 67:13 148:23 150:12 193:6
questions 9:10 70:6 152:25 153:10 157:8 174:25 182:7 184:7 187:21 quick 53:6 83:24 83:24,25 88:20 94:15 110:21 quickly 15:23 27:21 88:12 133:18 quite 67:19	realtime 1:16 218:7 reason 10:8 11:13 30:1 37:13 113:10 113:19 119:13 129:22 160:15 189:3 204:6 reasons 177:16 rebuild 74:10 80:23 82:4 rebuilt 50:3,5 74:19 79:13 83:2 190:3 211:6,10		
r r 2:1,19,22 6:7,15 7:1 103:22,22,22 105:16,16,16,17			

[regards - road]

Page 26

regards	19:21,23	29:17,21 43:18	revalve	83:1	
registered	1:15	44:1 65:10 92:25	reversed	129:15	
	218:5	149:20 220:10	review	19:18	
regular	31:16	relation	24:18,21 172:18		
	124:23 150:9	168:1	175:16		
regulated	53:15	relay	reviewed	19:18	
regulates	86:22	99:7	29:23 57:10		
regulator	31:13	relayed	revise	58:4	
	32:9,12 33:12	20:3,4	revised	16:18 17:4	
	34:19 38:3,7,9,14	released	58:6,15		
	38:22,24 39:2,4,8	108:8	rework	74:12	
	75:13 84:1,4	relief	rick	44:25 45:7,7	
	89:25 90:2,4,5,16	173:12,18,23		114:25 115:1,1,19	
	90:19,22,24 91:3,6	174:2,18 176:10		197:12,16,18	
	94:10,11 96:18,19	relocate		214:24,25	
	96:21 99:11,25	138:23	rick's	46:8	
	100:2,5,13,17,22	rely	rid	13:4	
	101:1 125:22,22	124:2	ridge	6:19	
	139:1 141:13,16	remaining	right	8:2,8 9:23	
	141:17,24 142:18	81:19		20:17 28:15 29:3	
	142:21 143:2	remember		29:8 35:9 37:5	
	144:1 194:7,13,19	37:19		40:8 55:14 58:14	
	194:22,24 195:2	110:20 119:17		67:22 68:19 70:1	
	195:10,12 196:3	121:15 125:8,10	rest	72:13,13 73:13	
	198:15	134:4 176:15	restaurant	79:3 85:3 89:21	
regulators	100:9	198:11 204:3		90:15 102:12	
rehooking	141:7	remove		104:6 107:22	
reiterate	169:13	158:24		108:4,11 109:17	
relate	17:24 21:24	159:1		109:21 110:18	
	21:25 50:21 92:13	render		115:2 118:24	
	92:19 219:18	176:20		128:1 129:16	
related	5:3 18:22	renovation		131:24 137:9	
	21:6 26:11 30:11	160:16:16,23,25	retagged	126:16	
	30:20 38:1 39:14	54:21 55:17	retail	139:4 164:13,21	
	63:24 74:15	156:15 169:19	retained	165:11 174:2	
	156:16 161:1,15	170:10,14 171:17	retest	178:24 190:21	
	181:2 206:17,17	219:9		200:9 205:3 212:9	
	218:15 219:6	reporter	retired	214:2	
relates	56:16	1:16,16	12:22		
relating	20:7	5:2 6:3 8:21 9:24		ring	21:20
	22:15,20 24:1	32:25 157:7	retrieved	58:3 105:11	
		183:12 215:21	161:20	115:17 121:19,20	
				170:21 209:13	

[robby - service]

Page 27

robby	114:19 115:15,15 121:18 121:19 206:15 208:5,6	174:10 181:4,8,12 181:24 182:2,8 219:7	scbas 34:3,16 35:2 36:14
robert	114:21,22 214:25	sale 31:10 salt 185:17 sample 186:15	scenario 110:21 scene 11:23 13:11 schedule 122:11 209:2,6,9
robin	114:20	sandra 2:19	scheduled 104:19
rode	108:11	sandy 5:15	school 116:12,14
rolled	14:14 119:14 123:24	sat 121:22,22	122:3 126:3
roof	145:11 147:16,20	saw 15:5 45:11 51:11 108:3 124:16,17 125:3	schraeder 47:10 47:11,25 48:16,17
room	76:1,8 127:16 130:24 131:25 133:14 134:3,11,18 135:4 135:9 136:8 139:13 144:13,17 151:4 152:4,13,17 156:7 206:1,13 220:17	130:5 133:19 155:7,9 156:4,7 179:14,14,15 213:9 214:12	scope 184:2 scott 1:13 2:24 4:16 5:19,24 6:1 6:13,16 7:8 11:10
rotate	202:17	saying 8:22 23:3 67:3 104:20 106:7 129:7,25 138:3 139:3 179:4,7 203:22 211:23	15:8 35:3 59:10 59:13,16 62:11,20 69:15,19 92:12 107:21 112:12,15
rounded	206:23	212:1	126:11 147:14 149:20 153:5 216:2 218:9 220:10 221:7
route	1:14 4:23 167:9	says 13:3,4,5,23 37:15 39:6 40:8 58:11 60:10 108:17,20,20	screaming 155:10 screw 48:3,18 88:15
rpr	218:20	109:22 112:20,25 113:1 122:2,23 126:3,4,15,21	screwed 124:18 screws 47:24 49:8
rule	202:4 212:2	127:23 129:14	sds 181:4,12,17
rumors	106:17 107:8	130:10 131:23 132:4,11,13,23	sealing 3:6 seat 108:12
run	140:23 195:24	133:2 139:9 143:23 161:5	second 13:17 129:6 148:14 157:5
running	139:15 144:9 160:18	192:2 203:17,19 203:20 204:17,19	seconds 78:5,21
ruptured	216:21	214:18 215:19	82:21
s			
s	2:1,22,22 3:1,1 6:7,16 35:22 61:6 61:7 84:16 114:17 116:13 147:1,1,1,9 219:1 220:1 221:9	sc 142:25 scale 135:2 scba 17:11 34:25 35:14,24	secured 136:21 security 149:8 see 13:22 15:11,11 15:13,24 17:13 20:5 23:23 24:14
safety	1:13 16:5 17:16 18:6,22		24:17,24 53:6 54:15 59:6,14 62:13 69:13 72:7 79:2 84:22 85:1,8 115:24 131:25 132:1,6,19,19 133:1,17,19 135:12 139:6 141:21 151:18 169:15 192:6 206:20 212:17 seeing 15:25 71:24 85:2 131:3,10 156:19 seen 55:13 131:12 140:15 156:15,23 171:16 197:4 208:6 self 35:2 142:25 174:3 selling 117:21 send 34:7 41:16 72:18 80:3 202:16 202:18 sense 124:19,23 174:11 sensitive 4:4 sent 69:17 177:7 209:11,21 sentence 9:18 separate 18:5 22:8 26:22,25 64:12 77:19 september 107:20 sequence 130:20 series 111:10 served 124:8 service 20:6 22:16 23:16 24:9 25:12 29:6,6 31:14 32:4 32:6,11 35:16

38:24 39:1,3,3 41:7,9 50:25 51:1 68:9 118:20 119:21 126:13 130:5 144:4 169:11,14 170:11 170:18,19,20,22 170:25 171:3,4,6 172:18 186:10 192:14,19 194:3 194:15 208:1 serviced 25:15 31:15,17,22,25 119:24,25 120:4,5 servicing 23:1 24:2 30:11 33:5 38:2 50:13 175:17 session 157:10 set 16:12 84:2 95:14 96:18,19 97:22 99:20,22,23 100:4,8 101:5,6 126:6 127:14 131:4,10,11 141:17,25 142:11 142:21 143:2,25 159:4 181:5 192:6 194:12,18 195:3 195:11,12,24 196:3 setting 96:21 141:23 194:7 settled 108:16 145:5 setup 86:10,12 91:12 seven 92:15,18 94:24 107:15,19 140:16 198:16 219:18	severe 132:25,25 severity 137:15 shb.com 2:19 sheet 181:24 182:3 sheets 181:8,12 182:8 shelf 127:1 163:23 166:3 shell 77:4 shelley 2:11 5:13 7:24 71:2 shipped 185:18 shock 132:8 shook 2:14 shop 16:19,21 71:13 79:6 98:10 98:20 106:23 109:3 114:4 115:16 119:15 121:20 127:16,16 131:21 134:20 135:18 136:14 151:2 155:7,8 156:6,6 170:21 203:9,10,11 204:13,18 206:21 208:9 209:14 short 62:8 123:9 shortly 215:7 shot 136:2 shoulders 153:15 show 7:13 20:24 21:1 23:24,25 75:4,21 78:15 83:22 133:20 135:4,9 139:5 143:18 190:16 showed 14:23 20:10,11 44:21 108:4 129:13 152:12	showing 33:4 73:4 152:4,15 186:16 220:16 shown 19:25 77:8 208:5 213:18 shows 78:3 132:21 135:3 shrug 153:14 shut 99:25 100:1 111:15 194:24 195:7 207:4 shutoff 88:4 111:21 shuts 159:11 168:15 195:6 shutting 86:16 sic 68:16 100:16 102:10 112:1 124:2 179:3 side 32:22,22 48:21 82:3 83:11 85:3 87:5 88:14 88:19 117:16 134:22 sign 159:14 177:25 signature 218:19 signed 3:15,16 16:8 similar 91:12 160:11 simple 184:9 simply 187:7 216:20 single 122:1 182:9 209:4,8,9 sink 80:19 81:21 siphon 44:18 45:17 sir 78:18 180:14 185:7	sit 160:23 site 89:15 185:17 sites 158:11 sitting 49:17 133:4 144:11 145:21,24 206:14 situated 163:4,5 situation 162:9 168:1 six 136:16 140:16 198:16 size 160:22 162:16 162:22,23 191:11 sizes 71:14 186:2,3 slim 96:11 slover 114:17 slowly 215:21 small 58:1 109:1 110:24 111:6 162:6 178:2 smaller 88:19 smart 98:7 smashed 212:3 smoke 134:14 smolineaux 2:12 sneeze 11:8 social 149:8 sold 45:14 119:19 sole 6:23 solely 74:15 174:25 somebody 73:3 97:10 115:6 128:20 145:1 207:6 someplace 135:23 140:5 165:10 something's 85:16 96:13 97:19 98:13 131:23
--	--	---	--

son 108:18 114:19 121:16,19 208:6	stampings 190:22 191:25 192:19	stay 26:2 stayed 33:15 133:9	street 107:15 161:9
sorry 33:18 59:8 93:11 182:21 190:21 210:12	stand 217:1 standard 95:20 161:14 213:12	stays 141:10,17 steady 78:9,21 82:18 195:13	stuck 195:2 stuff 62:12 137:10 151:6 204:15
sort 39:7 116:18	standards 26:2 28:2 158:16 159:23	stems 79:11 stenographic 218:12	style 162:21 suave 206:7 subject 157:23 158:4 165:17,21
sound 169:4	standby 133:3	step 130:3 136:16	166:13 183:23
sounded 127:22	staple 71:1	steps 56:21 73:8 73:18 81:3,5	184:1 190:2,10
sounds 74:14 91:11	stapler 18:13	star 214:18 start 18:14 46:5 71:4 96:15 105:3 123:19 125:4,16	subjects 168:6 subpoena 1:14 7:10,16 8:4 219:5
source 105:19 106:8 158:10	star 214:18 start 18:14 46:5 71:4 96:15 105:3 123:19 125:4,16	stick 207:8 sticker 172:6 174:16 175:9	subpoenas 69:10
sources 106:13,19	started 57:20 58:1 118:22 150:3 155:13	stigall 2:19 5:15 5:15,20,24 6:12 7:20 18:2,12 19:3 21:2 32:24 56:9	sudden 127:20
southern 1:2 4:19 41:17	starting 215:21	state 1:16 5:7 6:9 52:13 67:16,23 218:21	sued 2:16 suggestion 20:21
speak 95:6	starts 111:23	stated 71:4 statement 52:11 52:18 67:11,16,19 67:25 68:4 154:22	suite 2:9 summarize 29:18 summarizing 157:18
speaking 10:2 210:4	state 1:16 5:7 6:9 52:13 67:16,23 218:21	stated 71:4 statement 52:11 52:18 67:11,16,19 67:25 68:4 154:22	summary 53:24 supplier 155:5 supportive 13:2 suppose 198:2 supposed 102:19 137:8 139:8
special 34:8,9	starting 215:21	stated 71:4 statement 52:11 52:18 67:11,16,19 67:25 68:4 154:22	144:13,16 174:7 199:16 212:12
specifically 28:22 38:8 161:5 207:12	starts 111:23	stop 90:14 96:8,16 97:24 115:24 128:1 129:6	supposedly 127:11 suppression 2:17 2:18 15:2 22:22
specifics 131:13	state 1:16 5:7 6:9	stopped 7:22 145:9	23:1,9,17 25:7 48:4 80:16 83:15
specified 203:14	52:13 67:16,23 218:21	store 163:2	158:11,15,23
specs 21:21 22:14	stated 71:4	stores 1:8	176:25 181:3
speed 110:22	statement 52:11	storm 132:1	186:1,9 196:8,19
spell 6:13	52:18 67:11,16,19 67:25 68:4 154:22	straight 29:10	202:14
spinoff 27:24	statements 67:14	stations 75:6 80:14 159:11	sure 5:23 18:18 26:6 29:19 33:22
spiral 149:19 150:1,2 214:13 220:8	67:25	85:2,10 199:17	
spirits 108:5	states 1:1 170:10		
spoke 61:16	216:6		
stigall 2:19	station 75:9 77:8		
stage 84:4 90:1,4,5 90:22 91:6 94:10 94:10 100:13,21 198:15	78:24 80:11,18 81:7 93:24 204:9		
stamped 102:2 193:7,15 194:3,4	stations 75:6		
stamping 193:25	80:14 159:11		

[sure - tanks]

Page 30

38:21 45:10 68:5 68:19 69:11 72:12 72:14 81:10 82:19 120:21 128:25 129:25 130:22 142:20 159:18 168:24 174:13 176:16 177:21 182:23 187:14 201:25 202:1 205:7 214:1 surprise 192:12,16 212:14 swear 6:4 switch 24:23 93:9 93:17 139:8 switched 211:17 212:4 sworn 3:17 6:8 9:7 147:10 218:9 system 17:8,25 19:14,20 20:8 21:6 22:1,17 24:3 25:1 27:8,22,24 28:7 30:13,21,25 31:9,22 33:5 34:2 34:14,15 36:9,12 37:22 38:13,23 41:11 48:5 49:12 50:22 68:11,13 76:13 79:4,7 86:11,13 87:15 90:20,23 100:18 100:24 120:1 134:7 135:5 136:7 137:4,5 138:11 140:9 141:21 142:15,19 150:18 151:20 154:5,10 158:4,20,23 159:4 159:16 160:13,16	160:17 167:13 168:10,18 171:11 171:19,24 172:3 173:21 174:15 176:25 196:19 201:17 202:23 204:3,19 205:2 208:3 213:4 220:14 systems 1:7 2:18 23:11 25:9,11,14 25:18 28:12 29:21 29:22 30:5 36:5 44:25 46:11,23 80:16 83:15 158:11,15 181:3 186:1,10 196:9,25 202:14	taken 1:13 4:16 8:18 12:6 133:7 148:23 169:2 190:5 talk 11:7 12:25 46:4 71:23 93:6 93:10,18 108:24 112:22 113:21 124:13 talked 30:14 57:8 93:12,23 94:4 114:4 124:15 176:12 215:15 talking 12:23 21:8 49:7 53:10 70:15 76:5 85:5 89:21 93:8 117:3 125:8 125:9 133:25 170:16 173:21 178:9 207:6,11 208:25 209:2 211:13 t	102:15 109:20 110:24 111:2,7,15 111:17 127:7,9,11 128:6,12,15,16 129:10,11 132:5 133:21 137:8,18 140:17,18,22,23 140:24,25 141:7 141:23 142:23,24 143:2,6,10,12,23 144:1 157:23 158:4,24 159:2,2,9 160:17,20 161:22 162:5,8,24,24 163:10 165:16,22 165:25 166:7,14 173:24 174:9,18 175:1,4 176:13,25 177:11 178:20 179:8 180:22 181:16 184:9 185:11 186:2,5,7 tank 28:6 33:9 40:9,9,23 44:2,14 44:14,17,19 45:2,2 45:3,6,7,8,11,15 46:16,19,22 47:1,8 48:1,2,7,21,23 49:15,19,25 50:14 50:18 51:6 53:15 75:12 80:19 81:6 81:24 82:1 83:23 84:2,3,5,7,9,23 85:13 86:17,23 87:6,18,22 88:16 89:3,9,14 90:1,3,6 90:7,10,18 91:4,15 91:18,19 94:8,9 95:12,25 98:2,5 99:12 100:1,5,22 100:23,24 102:2,4
			tank's 174:21 176:20 tanked 181:20 tanks 13:19,20,21 15:3,4 19:24 22:2 31:13 32:4,9 33:11 38:4 39:17 40:2,17,18 41:12 41:20,24 42:3,12

[tanks - three]

Page 31

43:12,14,20,21	214:19	testimony 13:9 22:11 49:16 77:6	think 7:22 8:1,15 10:25 15:17,18
56:22 79:15 80:15	telling 166:12 194:2	77:21 128:10 129:2 130:1,1	18:2 19:13 21:10 21:19,21 22:13
85:19 87:12 89:17	ten 92:2 105:4 125:17 140:16 141:18 182:14	144:11 153:22 154:16 160:2 212:22	30:14 32:7 38:6 38:20 39:23 42:7 46:6 51:11 54:5
90:17 93:12 94:5	tend 46:6	testing 22:25 24:2 31:17 40:8 50:13	54:16 55:20 56:1 57:7 59:19 61:20
98:21 110:23	term 35:9,11 158:14 170:14	71:16 77:2,2,3 158:10 162:8	66:19 69:25 72:25 92:1 98:6 104:7
111:2,2 115:12	171:2,5	163:21 169:23 170:24	113:10 114:1,7 118:3 129:20
136:21 137:3	terms 60:19 72:8	tests 160:21 170:13	130:10 132:24 135:1 144:25
138:9,14,15,23	107:25 125:11	thank 5:17 6:2 11:21 32:24 61:11	148:23 152:23 191:21 197:11
139:1 140:4,8,10	131:3,9 161:13	61:11 62:24 78:1 78:14,22 83:7	201:3 202:21 203:13 205:13,14
140:14,15,15	169:1 216:16	87:3 91:20 93:5 129:19 148:17	205:17,18,22,24 206:1,17 210:7
142:9 160:4,9,11	test 23:16 34:13	152:20 154:15 156:12 163:14	212:20 216:23 third 140:24
160:17,19,19,20	36:5 42:1,2 44:17	171:9 182:16 187:11,21,23	thought 15:4 53:5 104:11 108:25
161:2,7,11,15,18	45:2,8,14 48:2,5	199:3 210:20 216:24	118:17 132:3 200:16
161:25 162:3,10	76:19,24,25 77:24	thanks 128:18 183:16	thread 94:19
162:10,12,14	84:17 101:15	thing 10:12 13:23 23:13 42:10 45:11	threaded 94:18
163:2 164:1,10,13	115:11 127:7	52:10,12 55:4 56:3 72:21 73:25	threads 48:15
165:25 166:1,13	128:6,15 129:11	82:6 96:6 108:13 108:19 109:7,16	189:1
168:12,13 179:18	130:24 143:6	116:2 125:7,10 132:16,20 156:9	three 15:25 18:4
186:4,24 188:15	144:4 158:14,21	166:16 215:4	21:20 25:25 98:18
194:14 196:7	158:22 159:1,9,18	things 9:16 36:21 61:18 131:3	98:20 101:10
198:2 203:16	159:19,21,24	177:19 214:6	114:14,16 118:11
204:1,23,25 206:9	160:20 161:6,10		122:2 126:17,17
task 189:18	163:22 166:2,5,5		126:19,25 127:2
taught 14:13 97:6	166:18,20,23		128:11 130:16
101:24 110:7	167:12,16 196:7,7		140:13 142:9
189:12 213:2,8	196:16,21,24		145:20,23 160:15
taxes 123:22	197:5 203:4 204:7		160:19 161:7
technical 20:7	204:12,16 205:8		
24:24 51:2,5	tested 72:16 76:23		
68:25	212:10 216:15		
technically 199:16	testified 6:10		
technicians 170:20	128:4 129:8,9		
technique 73:12	144:20 147:11		
tell 9:7,13 10:9	194:9,11 202:22		
26:4,16 44:10	testify 7:10 8:24		
60:4 81:5 84:4,6	testifying 9:2		
87:7 94:5 95:10	160:8		
97:13 106:3 117:1			
120:6 125:3			
149:25 165:21			
167:6 191:1			

[three - two]

Page 32

166:1	times	9:19 67:20 81:4 99:21 110:5 124:15	26:21 71:18 95:2 96:20 142:17 207:22 208:10 209:16	treatment 155:18 tree 126:12,13 130:5 145:23 tremberger 103:21 105:14,15 114:6,6 216:4
throttle 111:12	tire	48:18 195:5	trained 14:9,12 17:10 19:13 23:2	
throttling 111:23	tires	98:11	23:4,8 28:21,24	trial 3:12
throw 109:3 123:1	today	5:1,25 7:3,9 7:18 8:11 9:16,25	29:10 30:2 36:17	tried 132:8,10,18
138:4 187:8		10:21 11:5,14	99:9 119:9,9,10,10	trips 159:12
thursday 215:20		12:3 13:10,15	124:5,6 142:16	truck 126:22
215:22 216:3		14:22 19:5 22:11	208:1,3 212:22	132:10
tighten 82:1		49:17 58:24 61:15	trainer 20:4	true 169:10
till 156:4 211:24		64:6,20 67:8	training 13:23	183:15 218:11
time 3:12 5:6 6:3		73:16 116:6	14:5,8,24 17:8,24	truex 112:14,15
10:6,12 15:17		129:20 144:12	19:5,17,19 20:14	113:5,11
18:19 19:1 20:5		160:23 186:6,10	22:21 23:7 25:13	truth 9:7
21:10 31:20 34:20		187:22 201:17	25:19,21,22 26:15	truthfully 10:23
35:8 36:11 38:19		202:9,15	27:5 39:15,25	try 9:13,25 46:4
38:21,23 42:15,16	today's	152:3	40:11,15 43:18	95:17 106:15
42:25 44:4 47:6		220:16	56:18,19 71:19,24	145:8 153:10
49:20 50:11 56:23	told	12:14,19	72:2,5,8 73:1,9,20	trying 29:17 70:15
58:6,16,19 62:8,22		97:13 103:10	95:5 99:7 101:9	133:5 188:3
63:4,22 65:5,8		109:5,10,22	101:19 128:8	209:17,25 210:1
66:23 74:2 84:10		112:25 113:1	143:24 200:19	214:1
92:6,10 98:10		128:5,12 129:7,8	207:10,11,13,17	tube 44:18 45:17
99:9 102:22		130:5 187:4	207:18,19 208:14	45:17
104:15 114:13		189:14 197:17,18	208:16 209:14	tubing 48:6
116:8 117:21		198:8 205:16	transaction	turn 4:7 84:2,10
120:1 121:6 123:9	tools	12:1 13:12	205:24	85:22 86:4 90:12
123:12,18 129:4		172:21 175:20	transcription	94:16 131:7,7
138:11,21 141:6	top	45:23 47:9	218:12	151:7 195:20
141:25 144:10		48:11 49:8,19	transdermal	198:25 208:2
146:3 147:6 148:5		70:13 88:14,19	150:17 151:19	turned 9:10
148:8 152:22		169:7 189:2	220:14	132:17
156:3 157:14	topped	138:22	transferring 111:1	twe 195:3
161:9 162:11	total	166:1	transpired 156:17	twin 121:8,10
163:24 165:22	touched	213:20	transportation	two 6:19 13:7 18:4
179:21,23 187:15	town	31:4 106:22	53:14 54:3 55:3	22:7 54:14,17
187:18,21 190:10		107:8 109:1,4	191:4,11	76:16,21 77:17,19
191:18 193:11		167:7 168:2	treating 109:15	84:4 89:10 90:1,4
194:23 200:14	train	22:24 25:24 26:20	112:8	90:5,22 91:6
201:23 203:14				
208:20,21 211:3,6				
211:10 217:1				
219:22				

94:10,10 100:13 100:21 107:9 111:2 114:18 115:2 120:15 123:25 127:15 128:18 132:2 137:7 140:13,15 160:17,20,21 162:10 165:25 195:3 198:15 206:10 tyco 2:16,17,17 4:18 5:16 27:1 29:11 type 10:19 65:21 73:25 90:18 101:1 105:23 157:13 178:8 191:12 201:20 216:16 types 33:3 71:14 117:2	84:18 91:22 103:5 106:19 134:12 135:2 148:5 150:23,23 151:22 153:18 182:1 192:20 198:13 209:18 understanding 8:7 20:23 51:13 60:24 93:22 98:22 101:8 101:19 157:21 158:1,7 164:10,16 169:3 170:15 176:19 181:10 182:17,24 183:4 183:12 184:10,14 188:7,25 190:23 191:17 192:23 193:14,25 196:12 196:18 200:13 212:21 213:25 understood 171:12 182:11 unemployment 117:25 union 120:23 121:2 unit 4:14 united 1:1 unlocked 125:24 unrelated 60:23 upgraded 31:9 use 20:3 28:6 33:24 34:4,18 36:5 53:16 74:25 75:10 76:12 80:10 91:7 111:2 137:12 138:10,11 142:15 158:14 172:21,24 173:2,12 175:19 175:22,25 176:6,9	187:9 203:2,8,10 203:16 205:2 user 165:5 users 172:7 174:17 175:10 180:23 uses 34:14 usual 163:17 usually 32:20 81:20 83:17 163:9 utilize 173:12,23 174:17 utilized 152:8 166:14 186:25 v	198:25 211:5 valves 159:12 various 18:21 70:9 75:5 92:14,19 177:16 219:6,16 219:19 vendor 155:4 vendors 12:20,25 verbal 73:21 153:14 verbally 57:4,6 174:1,12 216:7 veritext 4:25 5:3 verna 2:8 version 129:21 vessel 95:13 96:3 vice 81:12,15,24 82:8 victory 1:7 video 1:12 4:11,15 8:23 32:21 188:13 videographer 2:23 4:1 5:1 6:2 8:23 18:18 19:1 62:22 62:25 63:3 78:13 92:5,9 136:1,4 141:18 144:9 146:3 147:4,17 153:1 187:14,18 210:17 216:25 voice 153:8 voices 216:10 volunteer 118:20 vs 4:17
u u 3:1 61:6,7 113:5 u.s. 4:19 55:3,18 219:9 uh 11:10,11 33:14 39:20 59:13,13 80:6 102:4 110:3 112:11 114:9 134:13 145:15 161:17 193:13 ul 28:2 ulster 46:12 umm 21:12 uncle 61:1,7 underneath 79:10 undersized 162:6 understand 7:8 8:7,20 9:1,6,12 11:2 13:1 61:17 68:8 77:7 84:17	understood 171:12 182:11 unemployment 117:25 union 120:23 121:2 unit 4:14 united 1:1 unlocked 125:24 unrelated 60:23 upgraded 31:9 use 20:3 28:6 33:24 34:4,18 36:5 53:16 74:25 75:10 76:12 80:10 91:7 111:2 137:12 138:10,11 142:15 158:14 172:21,24 173:2,12 175:19 175:22,25 176:6,9	vacuum 79:7 vague 170:19 valve 44:3,19 45:23 46:21 47:7 47:11,11,24,25 48:12,16,18,23,25 49:4,9,25 50:3,14 79:11,18,20 80:25 81:17,17 82:2,4,11 83:14 84:1,10,18 86:18 87:23 88:3 90:12 94:13,13,14 94:14,20,22 96:5 109:9,24 111:12 111:14,16,19 113:3 140:18 158:5,9 160:12 162:17 164:12 169:6 173:18 174:2,22 175:1,5,8 177:1,13 178:21 180:22 181:16,20 185:6 188:6,11 189:2,6,13 190:2,9 190:11,14 198:11 198:13,19,20,21	w w 59:19 62:12 123:21 wait 126:21 waiting 125:6,13 125:20 127:4 203:15

waived 3:8	wash 80:19 81:22	154:19 155:1,6,8	140:13 141:1
walk 131:24	washed 81:23	155:19 193:17	164:25,25 165:1
134:19	watch 84:11 85:15	205:22 206:1	170:18,24
walked 104:6,6,16	169:5	wet 80:21,22	words 6:19 194:23
126:10 131:21	watching 206:14	81:21	work 22:8 28:12
133:17 139:13	water 76:22 77:5	whatsoever 10:8	36:14 71:12 72:2
156:4 206:21	wax 22:5,6 72:20	10:21 154:12	79:13 80:11,23
walkill 167:7	way 14:13,13	166:11	82:5,24 94:12
168:2	40:15 43:4 49:18	wheel 111:16	104:3,4 122:6,15
wall 73:15 83:11	55:11 73:13 79:17	wheelchair 108:4	123:12,25 127:2
95:12 131:22,23	86:16,20 87:21	whiskey 191:4,5	128:11 135:11
136:22	94:4,7 108:6	whispering 4:5	144:21 145:22
walnut 2:9	111:15 112:25	white 119:12	159:16 160:5
wanna 126:16	123:15 127:14	132:14 134:12	176:24
129:24	136:25 142:5,9	wife 25:23 93:2	workbench 79:3,9
want 5:21 9:23	156:11 160:4	103:10 114:7	82:8
10:13,25 13:6	170:13 180:2,5	149:12 150:3,22	worked 42:20,22
15:5,10 31:24	183:25 184:1,18	214:2 216:1,2	58:3 71:5,9 98:10
32:1 42:13 47:16	189:10,17,18	william 105:13,14	103:9,25 104:2,3
47:18 53:16 59:2	196:14 197:20	114:6 145:1	104:15 106:23
59:20 62:7 64:7	211:11	window 105:5	114:4,5 115:1
71:25 73:12 75:6	ways 36:22 43:3	windows 132:17	117:12 121:12
93:17 100:3 120:5	208:12	wire 123:1 139:6	122:10 124:7
122:18 126:18	we've 79:11	140:6	208:6
128:8 136:1	147:14 190:17	witness 6:4 18:11	worker's 54:11
168:24 170:9	203:20	62:5 78:6,16,19	64:9,22 148:19,24
174:13 183:20	week 104:18	82:15,19 83:6	220:5
188:3,12 191:16	128:19 142:8	87:2 92:4 103:3	workers 64:12
191:17,17 194:6	160:3,10 161:1,16	103:17 111:4	working 71:11
199:5 204:18	161:25 162:15	136:3 152:3,22	98:20 101:10,20
210:19	163:11,12 164:3	167:11,19,23	102:23 104:1
wanted 126:17	165:24 188:15	187:23 198:4	114:10 117:4
128:23 166:22	203:25 206:10	205:7 210:11	123:17 143:20
196:4	216:8	218:9 220:15	144:5 177:15
wants 206:1	weeks 203:25	221:5	180:5 205:11
warm 127:18	204:1	witnessed 130:6	209:8 212:11,12
warning 173:7	went 22:13 69:18	159:7 214:23	workings 22:15
warnings 50:10	73:17 88:1 108:2	witnesses 159:14	workman 53:8
warwick 107:8	108:9 118:1	wondered 61:3	workman's 54:12
116:10 118:22	127:10 132:22	word 107:15	54:13 63:25 67:2
	133:23 137:16,20	110:25 111:9	

[workmen's - zip]

Page 35

workmen's 52:8	year 31:25 32:1 33:18 119:1 122:2 192:4 202:13 206:7 207:19 210:24
works 79:5,6 104:2,3 114:7 140:12 141:8 158:22 159:18 207:15	years 13:7 26:1 42:21,23 98:18,21 101:11 118:2,19 118:23,23 120:15 121:6,14 171:25
worst 200:22	182:14 184:6
worth 192:2 207:19	205:12 206:11 213:9
worthington 2:10 5:14 40:10 44:15 111:5 160:11 191:9 192:2	yesterday 7:23
writing 215:2	york 1:2,15,16 2:4 2:9 4:20,23 6:10 6:20 7:2 31:6
written 8:22 33:21 66:16 112:12 176:8	46:12 66:15,18 67:16,23 103:24 119:23 122:3 138:7 167:8 185:18 218:21,22
wrong 85:17 96:13 128:7 129:17 185:19,21,22 194:10	young 103:9,20 yup 9:8 88:24
x	z
x 1:4,10 113:5 134:4 136:9,9 219:1 220:1	zero 100:2 101:6 zip 66:19
y	
yards 96:6	
yeah 8:1 11:16 14:17,20 20:16 21:2,16 34:23 42:22 43:7 45:9 59:21 62:11 65:24 69:21 80:8 91:23 98:1 104:6,7,14,15 105:1,2,15 108:12 112:22,24 113:17 118:19 119:2 131:5,6 133:17 144:23 183:19	